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THESIS

BULLETS WITH NAMES:
THE DEADLY DILEMMA

by

Roger G. Herbert, Jr.

June 1992

Thesis Advisor:

Frank M. Teti

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Bullets With Names:
The Deadly Dilemma

by

Roger G. Herbert, Jr.
Lieutenant, United States Navy
B.S., Davidson College, 1983

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ABSTRACT

The United States, by executive order, has unilaterally forfeited assassination as an instrument of foreign policy. Some Americans now believe that a declared prohibition unreasonably limits U.S. capability to counter the national security threats posed by terrorists, revolutionaries and Third World crusaders. This thesis is an examination of the national security policy dilemma which political assassination presents. Circumstances are conceivable in which utilitarian calculations would endorse assassination as the most moral application of deadly force. Yet the draconian practice of assassination as an instrument of American foreign policy seems to contradict democratic ideals. This thesis details both arguments and draws two major conclusions. First, assassination cannot support long-term U.S. policy goals or warfighting efforts. Ultimately, such methods could weaken America's global position. Second, while assassination has no place in the U.S. warfighting arsenal, the assassination ban itself has become dysfunctional and requires reevaluation.

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EXECUTIVE SUMMARY

The United States has unilaterally forfeited assassination as an instrument of foreign policy. In 1976, President Ford issued Executive Order 11905 in response to allegations that in the early 1960s the CIA had been involved in plots to assassinate premiers Patrice Lumumba and Fidel Castro. Contained in this thirty-six page document were seventeen words prohibiting assassination: "No employee of the United States government shall engage in, or conspire to engage in, political assassination." Today the assassination ban is contained in Executive Order 12333.

It is difficult to argue with the commendable moral perspective of the order. Yet some Americans now believe that a declared prohibition unreasonably limits U.S. capability to counter the national security threats posed by terrorists, revolutionaries and Third World crusaders. This thesis is an examination of the national security policy dilemma which political assassination presents.

Those who favor rescinding the assassination ban contend that if a threat to U.S. national interests assumes a personal character, then the counter to that threat is justified, in the name of expedience, to do the same. This paper presents three arguments favoring this orientation. First, assassination could save lives. Since assassination goes directly to the source, it is a more humane application of deadly force. The second argument is that assassination may be an

indispensable weapon in a Third World regional or low intensity conflict. In many Third World nations, the lines separating armies from the personal agendas of the dictator are blurred to the point that it is difficult to effectively attack one without attacking the other. Finally, in many Third World states, the concept of nation differs from the Western version. It is the regime, not the security of the state, which is most highly prized. A deterrent threat which fails to target the regime, therefore, is ineffectual.

Squaring off against these arguments are six practical and philosophical considerations. First, assassination, if attempted, is a highly complex operation. Defeating the security which surrounds military and political leadership may prove to be prohibitively difficult. The second argument against assassination is the difficulty of identifying agents to carry out such an operation. American soldiers are not assassins. If left to surrogates, U.S. political and military leaders would lose control over the endeavor. Third, there is very little historical evidence to suggest that assassination can accomplish its purpose. The linkage between a specific individual, particularly at the level of national leadership, and a disagreeable policy which his nation or organization may embrace, is often exaggerated and never completely clear. Fourth, an assassination is only logical if the successor is more benign. However, predicting the identity and character of that successor is problematic. Fifth, if the United States chooses to assassinate its enemies, then, having set the moral agenda, it invites retaliation in kind. Finally, assassination, perceived by many to contradict democratic norms, may weaken

America's global credibility and corrode its domestic consensus.

From these arguments, this thesis draws two major conclusions. First, assassination cannot support long-term U.S. policy goals or warfighting efforts. Ultimately, such methods could weaken America's global position. Second, while assassination has no place in the U.S. warfighting arsenal, the assassination ban itself has become dysfunctional and requires reevaluation.

Because the issue of assassination in American foreign policy is a dilemma, and not an absolute, policy which treats assassination as an absolute, as the executive order does, is flawed. Surviving the changing patterns of the global political milieu necessitates a framework for decision making which is also capable of change and continual adaptation to new situations. This paper recommends, therefore, normalizing policy toward political assassination, thus allowing existing conventions and institutions to contain the matter. Normalizing assassination policy fixes the burden of moral deliberation on existing democratic institutions rather than specific laws. Only this form of regulation allows adjustment of policy in the light of discussion and experience.

I. THE DEADLY DILEMMA

Beginning on December 22, 1974, Seymour Hersh wrote a series of articles for the New York Times which profoundly influenced America's waning confidence in its government. Hersh alleged that the CIA, despite its charter prohibiting any security or police function within the United States, had conducted a massive domestic intelligence operation during the Nixon administration against the anti-war movement and other dissident groups. These revelations set in motion an extraordinary outburst of congressional and executive inquiries which uncovered even darker secrets: the CIA had plotted to assassinate foreign leaders!¹

The timing of these disclosures could not have been worse for the CIA. Watergate was a recent memory. The pervasive attitude of distrust and suspicion on Capitol Hill was matched only by President Ford's desire to distance himself from the legacy of his predecessor and the specter of an imperial presidency. The President acted quickly, preempting congressional action. On advice of the Rockefeller Commission,² Ford issued Executive Order 11905. Contained in the thirty-six page executive order were seventeen words banning assassination: "No

¹See Congress, Senate, Select Committee to Study Governmental Operations, Alleged Assassination Plots Involving Foreign Leaders (Washington, D.C.: U.S. Government Printing Office, 1975).

²The commission chaired by then Vice-President Rockefeller is formally referred to as the Commission on CIA Activities Within the United States.

employee of the United States Government shall engage in, or conspire to engage in, political assassination."³ With these words, the United States government unilaterally forfeited assassination as an instrument of foreign policy.⁴

It is difficult to argue with the commendable moral perspective of this action. Indeed, each president since Ford has likewise embraced this moral declaration. President Carter's Executive Order Number 12306 modified the assassination ban only marginally.⁵ Reagan and Bush also adopted the prohibition which is currently contained in Executive Order Number 12333.⁶

However laudable its veneer, the assassination ban presumes an absolute moral frame of reference; and absolutes rarely endure the corrosive forces of reality. Recent times have witnessed armies collide and blood spill, seemingly because of the adventurism of a demagogic few. These events have prompted many to question the wisdom of the assassination ban. Are there situations in

³Executive Order 11905, Federal Register 7707 (1976).

⁴The United States is the only nation with an explicit prohibition against assassination.

⁵Carter amended the assassination ban to read: "No person employed by or acting on behalf of the United States Government shall engage, or conspire to engage, in assassination." See Executive Order Number 12306, Federal Register 3678 (1978). The most prominent feature of this amendment is the removal of "political" as a modifier of assassination. The impact of this modification is unclear, although it may be more grammatically correct. Some argue that "political assassination" is a redundancy since the political context of assassination seems to be its distinguishing feature.

⁶See Executive Order Number 12333, Federal Register 59,941 (1981).

which an assassin's bullet may provide the most expeditious, least costly solution to a crisis? Is assassination ever the moral alternative?

These questions present policy makers with a "deadly dilemma." Assassination as an instrument of American foreign policy is a dilemma since deadly force of this nature seems to contradict the democratic ideal. Yet circumstances are conceivable in which utilitarian calculations would endorse assassination not only as a more moral alternative, but as the moral imperative.

This thesis is a study of the deadly dilemma. It is not merely a history or a survey of assassination. It deals with the relationship between a particular genre of assassination (characterized by its origin: the state; its target: a foreign enemy of the state; and its goal: the enhancement of national security) and the modern American situation. Within this framework, we shall attempt to answer two questions. The first considers the efficacy of assassination as a political tool. Could an assassination support long-term U.S. policy goals or warfighting efforts? The second question challenges the value of the assassination ban itself. Does an executive order which explicitly prohibits political assassination ultimately enhance or diminish America's global position?

The importance of these questions is clear. In matters concerning the interaction of law, morality and policy, the hard cases are the most instructive. A discussion about the assassination ban parallels the continuing dialogue over the American national identity. Considered as a case study, this polemic

addresses the larger issue of the force of moral and ethical considerations in American national security policy.

The urgency of this question may be less apparent. Since the political milieu surrounding the adoption of the ban was not conducive to an objective treatment, the issue of assassination still awaits substantive debate. Meanwhile, the immediate demands of national security are corroding the ethical underpinnings of the prohibition. This decay is evident both in public discourse (witness the editorial debates appearing prior to and during Desert Storm concerning the disposition of Saddam Hussein) and in recent military operations which have seemed to openly challenge the executive order. Before the assassination ban quietly becomes an anachronism, a token of America's lost naivety, it is imperative to articulate and objectively analyze both perspectives of the deadly dilemma.

Brian Jenkins writes:

It could be said that assassination is an inappropriate subject for analysis because it raises such profound philosophical issues. Inevitably, one's views are personal ones"⁷

Jenkins's warning is appropriate. With this in mind, this paper strives to temper the influences of personal inclination by presenting both platforms of the assassination debate and by using the historical case, wherever possible.

⁷Brian Jenkins, "Should Our Arsenal Against Terrorism Include Assassination?" (Santa Monica, CA: RAND Corporation, 1987), iii.

Despite methodological safeguards, perfect objectivity is impossible in normative discourse. Personal values have unavoidably influenced this study. It may be useful, therefore, to present these opinions from the outset in order to allow the reader to recognize failures in objectivity. They are twofold. First, political assassination has no place in American foreign policy. Second, despite the inadvisability of political assassination, the assassination ban itself will become dysfunctional vis-a-vis the modern threats to U.S. and global security. Indeed, the prohibition may already be moribund, awaiting the proper test case to prove its ultimate inefficacy.

If these propositions appear to be fundamentally opposed or even mutually exclusive, then the ensuing chapters should disengage any apparent incongruities. Chapters Two and Three address the history of political assassination in the American context. Chapter Two examines the history of political assassination as an instrument of American foreign policy prior to the adoption of the executive order. Chapter Three traces the evolution of the assassination ban itself. The next two chapters are the most critical. Chapter Four presents the utilitarian arguments that favor assassination and demonstrates the weaknesses of a clear statement prohibiting assassination. Chapter Five reconsiders these arguments from a broader ideological perspective. The final chapter summarizes the salient arguments presented in this thesis and proposes policy alternatives sensitive to these arguments. Since this chapter represents a synthesis of ideas, the influences of personal biases are most evident. The author acknowledges, therefore, that

these conclusions are far less important than the various perspectives contained in the body of this paper. Before proceeding with an analysis of these perspectives, however, it is appropriate to further clarify the language and circumscribe the scope of this discussion.

A. THE STATE OF THE INQUIRY INTO ASSASSINATION

Recorded instances of political assassination coincide with mankind's earliest known efforts at political organization.⁸ The first objective inquiries into assassination, therefore, predate Christ and transcend cultural and geographical reference. Various philosophers and analysts throughout history have argued about the evils of assassination as well as the right and, in some cases, the responsibility of people to assassinate undesirable leaders. Perhaps the two most important pre-modern commentators on assassination are Aristotle and Saint Thomas Aquinas.

The Western concept of "justifiable tyrannicide" is Aristotelian. Aristotle was the first to attempt to assemble, in a purposeful and coherent manner, the necessary elements in which tyrannicide could be justifiably contemplated.⁹ He offered both usurpation of power and misrule as grounds warranting tyrannicide. Aristotle may have also instituted a tradition of moderation for serious thinkers in such matters. He cautioned that violence should be aimed against the ruler

⁸Franklin L. Ford, Political Murder (Cambridge, MA: Harvard University Press, 1985), 5.

⁹Ford, 44-45.

himself only if no other discernible remedy was available. He was careful to draw a line between the justifiable case and a "pseudo-tyrannicide" undertaken on less defensible grounds. Furthermore, Aristotle pointed out that a legitimate resistance of this nature must take the form of elite action from within the body politic.

The resiliency of the Roman Empire owes much to its respect for civil law. Because of Rome's record of conservative yet flexible institution-building, and its efforts to accommodate conflicting social demands, tyrannicide did not receive such analytical attention. Accordingly, the murders of Tiberius Gracchus and Julius Caesar were indicative not of a principled action taken on behalf of the Roman community as a whole, but of a malignant social crisis.¹⁰ Despite these assassinations, which are among history's most infamous, the Roman Empire added little to our understanding of assassination.

Biblical consideration of tyrannicide is limited to the Old Testament.¹¹ However, some of the most scholastic and influential Christian commentators have confronted this question. Among these is Saint Thomas Aquinas, thought by many to be the culminating figure in the development of medieval theology. Thomistic reflections on tyrannicide transcend the dogmatism of antiquity to present a more sophisticated acknowledgement of the nuances of political

¹⁰Ibid., 50.

¹¹Ford identifies three "fairly distinct clusters of politically motivated or at any rate politically significant" murders in the Book of Judges, the Second Book of Samuel, and the Second Book of Kings. See Ibid., 8-24.

assassination. Although his earlier works reflect the Aristotelian principles of justifiable tyrannicide adapted marginally to incorporate the Thomistic notions of natural law and the common good,¹² he offers a more modern approach in De Regimine Principum. Here he writes, "good kings would be likely to be slain more often than tyrants, for the rule of good kings was hard on evil-doers and evil men were more likely than good men to resort to such a desperate measure as tyrannicide."¹³ Saint Thomas may have been the first to fully appreciate the complex character of political assassination.

The consideration of assassination enjoys a broad temporal scope. With this acknowledgement, it is unclear why assassination receives so little scholastic attention today. Most recent studies of assassination are either journalistic or historical.

Brian Jenkins, a highly regarded expert on terrorism, has provided some notable exceptions. For example, in a RAND Paper, "Should Our Arsenal Against Terrorism Include Assassination?" Jenkins isolates the essential variables of this issue. He presents five arguments favoring assassination as a weapon against terrorism and ten antithetical arguments. Although he limits the scope of his discussion to assassination as a weapon against terrorism, most of the variables

¹²In Commentum in IV Libros Sententiarum, for example, Saint Thomas writes that "he who kills the tyrant for the liberation of his country is praised and receives a reward." See *Ibid.*, 125. St. Thomas presents his discussion of natural law and the common good in Summa Theologica.

¹³Cited in Ford, 125.

he discusses are equally applicable to the broader perspective presented here. Indeed, this paper borrows liberally from Jenkins's arguments.

Franklin Ford, who has already been cited several times in this chapter, has written one of the most comprehensive books available on assassination. In Political Murder, Ford presents a cross-cultural survey of the uses of murder in politics. Ford relies on historical analysis to support his thesis that the results of assassination rarely secure the aims of its agents. With the exception of its historical value, however, Political Murder is only marginally applicable to this study. Ford deals primarily with the lone assassin, the perpetrator of most political murders according to Ford.

Murray Clark Havens, Carl Leiden and Karl M. Schmitt's collaboration, The Politics of Assassination, complements Ford's book by concentrating on the recent history of assassination. This study of the impact of assassination on political systems is based on ten case studies. The authors conclude that where institutions are strong, assassinations have little impact. While this study provides a valuable historical record, it is also of limited value here since the assassinations which it discusses also differ in kind from those considered in this paper.

Michael Walzer's Just and Unjust Wars is a superior commentary on military ethics. Although any specific treatment of assassination is cursory, he renders coherent principles which must be considered in any careful treatment of political assassination. Walzer surveys the moral issues which complicate modern warfare.

Most importantly, he illuminates the often conflicting influences of military necessity and liberal democratic tradition.

It is immediately apparent from even a casual review of the literature that assassination is ill-defined as a subject of study. It has been variously defined and used in rather divergent ways. That a single rubric contains the actions of a lone crusader with indications of psychological disturbances, like Sirhan Sirhan,¹⁴ and those of Israeli commandos unemotionally carrying out state policy, indicates acute analytical imprecision. It is important, therefore, to clarify the concept of assassination in the context of this paper.

B. FOCUSING A BLURRY REALITY

Although executive orders are not laws, they function similarly. Executive orders define boundaries for government policy. They do not contain the punitive element of a law, but an individual crossing these boundaries, even a president, should expect to incur, at a minimum, political costs. It is imperative, therefore, that the margins which define illicit conduct within an executive order are clear, that the guidelines it establishes are discernible.

The assassination ban contained in Executive Order 12333 has established only vague margins. The ban clearly prohibits political assassination, yet it fails to clarify this sweeping term. Two explanations present themselves for this. First, the drafters of the ban may have simply been negligent. They may have

¹⁴See Robert Blair Kaiser, RFK Must Die! (New York: E. P. Dutton and Company, Inc., 1970).

assumed that the term "political assassination" requires no further explication. A more likely explanation for the lack of clarity is that the authors of the executive order hoped to allow flexibility within the ban by permitting the decision maker to define his own terms.

This indeterminacy has, in fact, produced the opposite effect. The decision maker who adopts anything other than the broadest definition of political assassination, risks reproach for violating the ban. The result is self-deterrence.

1. Assassination Writ Large

Without clarification, the phrase "political assassination" conjures up images of two failed assassination attempts. Months of congressional investigation in the mid 1970s revealed that the CIA had directly plotted the deaths of two leaders during the preceding decade, Premiers Fidel Castro of Cuba and Patrice Lumumba of the Congo (now Zaire).¹⁵ The details of these events forged the American perception of assassination. They are classical assassination scenarios, "assassination writ large."

Between 1960 and 1965, a period spanning the administrations of Presidents Eisenhower, Kennedy and Johnson, the CIA considered at least eight

¹⁵The Senate Select Committee on Intelligence, established on 21 January 1975 to investigate alleged CIA indiscretions, became sidetracked by allegations of CIA assassination plots. Although the assassination plots were not a part of the Committee's statutory mandate, committee chairman Frank Church established a special Subcommittee on Assassination in order to expedite the probe into these allegations.

separate plots to assassinate Castro.¹⁶ Planning began in earnest eight months before the 1961 Bay of Pigs invasion of Cuba. The CIA, working through Robert Maheu, a former FBI agent, asked John Roselli, a reputed figure in the criminal underworld, to locate Cubans willing to assassinate Castro. Roselli soon brought two other underworld figures, Sam Giancana and Santos Trafficante, into the operation. These men developed a plan which involved poisoning Castro's food in a Havana restaurant. The assassination plotters actually delivered the poison pills to operatives in Cuba, but the CIA subsequently abandoned this effort after several of the Cuban operatives assigned to administer the poison to Castro backed out. Other schemes never advanced beyond the CIA laboratory. These involved such exotic devices as a fountain pen containing a poison needle, deadly bacterial powders, poisonous cigars, exploding sea shells and a contaminated diving suit.

The committee found direct evidence of one other case of CIA intent to assassinate. Patrice Lumumba had threatened to bring the Congo under Soviet influence after it declared independence from Belgium in 1960. In response, assassination plotters within the CIA devised two main methods for killing him. One involved the administration of a biological toxin. The other was "simply" to shoot him with a high-powered rifle. The plan proceeded as far as the delivery

¹⁶Congress, Senate 1975, 4-6.

of a poisonous substance to Africa. The intended assassins, however, never made the attempt.¹⁷

These findings shaped the American perception of political assassination as conspiratorial murder—repugnant, lurid and laughingly ineffective. These were the types of scenarios which the assassination ban justifiably sought to outlaw. But "assassination," undefined within the text of the executive order, encompasses actions which differ both in degree and kind from the classical scenarios. The next section discusses the problems of definitions.

2. What is Assassination?

It is not important for this paper to arrive at a precise definition of assassination. Indeed, since the assassination ban itself provides no clarifications, definitions are as irrelevant as they are ubiquitous. A more meaningful pursuit is to establish boundaries within which a reasonable person might interpret a government action to be political assassination. This is an arbitrary and highly theoretical endeavor, but it is an important one for our analysis of the assassination ban. The prudent government official must consider exactly this if he feels that his policy may contradict the prohibition. He must establish criteria for defining boundaries which satisfy his colleagues and superiors in government, the American public and his own moral standards. This section suggests a logical set of criteria for determining if a policy or particular state action is likely to precipitate charges of political assassination.

¹⁷Congolese rivals killed Lumumba in 1961 without CIA assistance.

Advancing definitions and establishing criteria are distinct tasks, but they are not unrelated. Previously advanced definitions may be helpful for highlighting certain elements which establish these operational margins. Selecting from the field of definitions requires care, however, since assassination is a word that evokes emotional response. Jenkins describes it as a word that is "hissed, not spoken."¹⁸ Most definitions contain either judgmental or euphemistic language, depending on the intent of the person who is advancing the definition.

The word "assassin" derives from the Arabic "Hashishiyyin," and refers historically to one of the Shiite Ismali sects in Syria and Iran in the eleventh and twelfth centuries, which waged war through assassination.¹⁹ Although the Arabic original was non-judgmental, a negative connotation has persisted in the West. Webster's, for example, defines assassination as "premeditated and treacherous murder."²⁰ Western repugnance for assassination is reminiscent of

¹⁸Jenkins, Assassination, 1.

¹⁹The Hashishiyyin, or "Order of the Assassins," emerged as a result of irreconcilable splintering within the Ismali movement at the end of the eleventh century. Founder Hasan-i Sabbah envisioned a series of mountain fortresses, made impregnable through the commitment of devoted men. For centuries this sub-sect of fanatical Ismalis, also called the Old Men of the Mountains, waged war by assassinating those leading men who stood as obstacles to the propagation of their religion. They became known as the "Hashishiyyin," or hashish-eaters because of the legend that the young men chosen as assassins were promised paradise by their leaders. They were given a foretaste of paradise through hashish. See Ford, 100-104. See also Edward Hyams, Killing No Murder (London: Thomas Nelson and Sons Ltd., 1969), 30-32.

²⁰Webster's Encyclopedic Unabridged Dictionary of the English Language (New York: Portland House 1989), 89.

the Western military tradition which regarded the cross-bow as somehow sneaky.²¹ This congruency is even more remarkable since the Second Lateran Council in 1139 sought to impose a ban on the cross-bow. Americans, who have witnessed the assassinations of four presidents, are especially likely to condemn assassination without hesitation.

Franklin Ford presents a definition which contains no apparent bias. He defines assassination as "the intentional killing of a specified victim or group of victims, perpetrated for reasons related to his public prominence and undertaken with a political purpose in view."²² This definition emphasizes the personalization of the victim, but fails to incorporate the notion of state complicity crucial to the type of assassination which this report addresses. David Newman and Tyll Van Geel offer a definition which contains this element. They describe assassination as an action "condoned by a responsible official of a sovereign state as an intentional state action expected to influence the policies of another nation."²³

These definitions contain three elements which comprise our criteria. Taken together, these criteria are necessary and sufficient to describe an action as an assassination within the context of the executive order. The first element is the

²¹Martin van Creveld, The Transformation of War (New York: The Free Press, 1991), 81.

²²Ford, 2.

²³David Newman and Tyll van Geel, "Executive Order 12333: The Risks of a Clear Declaration of Intent," Harvard Journal of Law and Public Policy, 1989, 434.

authority of a state official for conducting the action. The second necessary element is the intent to influence the policies of the targeted national or sub-national entity. Finally, political assassination requires a victim who is specifically identified. Operationally defined, if an official action targets an individual by name, then it fulfills these requirements. A "bullet with a name on it," therefore, is always an instrument of political assassination.

To summarize, this section has described the classical assassination scenario and argued that, although this scenario has forged American perceptions, it is insufficient for defining assassination as it appears in the ban. Indeed, since the ban contains no definition, definitions themselves are arguably inconsequential to a discussion of the ban. Instead, we have drawn general ideas from more specific definitions of political assassination to establish three elements which are necessary and sufficient to describe an action as assassination. These elements are logical criteria for a government official operating within the assassination ban.

Two criticisms of this approach are likely. The first is that the criteria described are too broad; they would encompass actions far beyond the scope of those associated with the classical assassination scenario. Far from detracting from the argument, this criticism supports the thesis of the next chapter. A prudent government official who ventures beyond the margins which these three elements demarcate, risks political reproach. He may choose to assume this risk. If attacked, he may rightly argue that his actions were within the spirit of the ban.

The language of the ban certainly lends itself to this sort of semantic maneuvering.

Alternatively, he may not wish to engage in this kind of risk taking at all and define assassination in its broadest sense. In this case, inaction is inevitable. In 1989 President Bush cited the assassination ban as the primary reason for his decision not to commit U.S. assistance to the failed coup attempt in Panama.²⁴ This example addresses a second likely criticism: that there is no empirical evidence to suggest that a decision maker would adopt such a broad definition. Bush's criteria were apparently more general than our's. Although the coup plotters had no intention of killing Noriega, the fact that the coup placed Noriega in mortal danger was enough to deter Bush.

The next Chapter analyzes the Yamamoto killing and the Phoenix program as examples of American experiences with assassination as state policy. Both cases pre-date the assassination ban and seem only remotely related to our classical perception of assassination. Yet if the reader accepts the proposition that a government official must consider criteria similar to those which this section proposes, then it is clear that the capabilities embodied in these case studies would be difficult to reproduce in today's political milieu.

²⁴Pat Towell, "Administration Seeks Leeway in Helping Future Coups," Defense and Foreign Policy, 21 October 1989, 2812.

II. ASSASSINATION IN AMERICAN FOREIGN POLICY

The United States was created by a war of rebellion and united by the nineteenth century's costliest war of unification. Geographical expansion made it a superpower. Protecting that status has frequently necessitated deadly force. Despite this necessity, assassination has never been a prominent tactic of U.S. policy. Throughout America's violent colonial period, for instance, there were no lethal assaults against representatives of the British crown.¹ Even during the watershed years of the Civil War, when General Sherman's announcement that "war is hell" became doctrine,² enemy generals and political leaders were never recognized as legitimate targets. As this chapter argues, there are only four episodes in American history which could be considered under this rubric.

So why should we study a virtual null set? Four occurrences appearing over a period exceeding two hundred years may be explained as outliers, historical anomalies. But this explanation is unsatisfactory. These cases, related by their temporal proximity to one another, represent a trend. A thirty year span, from 1943 to 1972, contains all four data points. Considered on a graph of American history, these "outliers" form a significant spike indeed.

¹Ford, 347.

²See Russel F. Weigley, The American Way of War (Bloomington: Indiana University Press, 1973), 128-152.

We have already discussed two of these cases: the Castro and Lumumba attempts. Some of the nuances of these cases appear throughout this report. This chapter considers two additional cases and proposes that Operation Vengeance, the 1943 killing of Admiral Yamamoto, and the Phoenix program, the campaign to destroy the Viet Cong political infrastructure during the Vietnam war, are also cases of political assassination.

Some may argue against placing these examples under the same rubric as the Castro and Lumumba cases. After all, they both transpired in wartime. Although not all acts of violence in wartime are legally or ethically permissible, killing is widely considered to be legitimate. This objection is further validated by the fact that the 1976 assassination ban did not restrict decision makers during World War II or the Vietnam War.

But historical analysis permits flexibility. This chapter bends chronology in order to consider the Yamamoto and Phoenix cases in the context of the assassination ban. Considered from this artificial perspective, it is clear that America's experience with assassination is more extensive than many would suspect. Applying the criteria of Chapter One to the Yamamoto and Phoenix cases demonstrates that the executive order not only proscribes the morally repugnant actions which were the targets of the prohibition, but may also call into question related capabilities which the United States may not wish to surrender.

A. YAMAMOTO

In the first days after the Japanese surprise attack on Pearl Harbor, Admiral Isoroku Yamamoto, the architect of the operation, declared on Tokyo Radio: "I am looking forward to dictating peace to the United States in the White House in Washington."³ Yamamoto's boast may have instilled confidence in a nation embarking on an uncertain future; it certainly fueled the antipathy of the American war planners who issued his death warrant and the aviators who claimed his life. Despite its conventional aspects, the killing of Admiral Yamamoto was clearly America's first documented experience with assassination as a warfighting instrument.

1. Background

Notwithstanding his haughty rhetoric after the attack, Yamamoto, commander-in-chief of the Japanese Combined Fleet, had resisted from the outset those forces in Japan that sought war with the United States. He knew well that Japan, despite an intensive shipbuilding program, could not sustain a war with the United States for more than a year or two.⁴ Even while he planned the Pearl Harbor attack, he continued to privately and publicly oppose the war. In a talk given at a primary school reunion in Tokyo on 18 September 1941, Yamamoto warned that Japan could not defeat the United States. "Therefore, she

³Isoroku Yamamoto quoted in R. Cargill Hall, Lightning over Bougainville, (Washington, D.C.: Smithsonian Institution, 1991), 1.

⁴Ibid., 10.

should not fight the United States."⁵ But as events moved Japan and the United States inexorably toward war, Yamamoto commented, "If you insist on my going ahead, we can run wild for six months or a year, but I can guarantee nothing as to what will happen after that."⁶

One year had elapsed since Pearl Harbor, and a succession of intense sea and air battles, culminating in the Japanese withdrawal from Guadalcanal, confirmed the admiral's prophesy--Japan was now engaged in a war of attrition. On 13 April 1943, after weeks of conferences analyzing details and reasons for the Guadalcanal retreat, Yamamoto planned a series of morale building visits to the Japanese navy's frontline bases in the Shortland area, off the southern tip of Bougainville Island. Commander Yasuji Watanabe, his staff administrative officer and friend, worked out the plans for the journey, and sent a top secret radio message to the various base commanders involved:

On 18 April Commander in Chief Combined Fleet will inspect Ballale, Shortland, and Buin as follows: Depart Rabaul 0600 in medium attack plane escorted by six fighters, arrive Ballale 0800. Depart at once in subchaser to arrive Shortland 0840. Depart Shortland 0945 in subchaser to arrive Ballale 1030. Depart Ballale by plane to arrive Buin at 1110. Lunch at Buin. Depart by plane to arrive Rabaul 1540.⁷

⁵Yamamoto quoted in John Dean Potter, Yamamoto (New York: The Viking Press, 1965), 59-60.

⁶Yamamoto quoted in Hiroyuki Agawa, The Reluctant Admiral (Tokyo: Kodansha International Ltd., 1979), 232.

⁷Cited in Hall, 41.

A radio interception post at Dutch Harbor in the Aleutians received the coded signal just as promptly as the intended recipients. Dutch Harbor relayed the message to three special processing units located in Washington, Pearl Harbor, and Melbourne, Australia. Because of the great variety of addressees, Watanabe's message immediately alerted the communications intelligence analysts. One analyst, Marine Lt. Col. Alva "Red" Lasswell, reportedly leapt to his feet and exclaimed, "We've hit the jackpot!"⁸ All hands worked feverishly to decipher the message.

Lasswell hand carried the deciphered message to the office of Edwin Layton, Admiral Nimitz's intelligence officer. Layton took it directly to Nimitz. In a discussion of the contents, Nimitz asked Layton, "Do we try to get him?"

2. The Mission

The decision to shoot down Yamamoto's plane was fraught with subtle tactical and strategic considerations. Reacting to this intelligence could have alerted the enemy that the Allies had broken his code.⁹ One had to consider the many possible political repercussions as well. Admiral Nimitz consulted with Washington and received the go-ahead from Secretary of the Navy Frank Knox to conduct Operation Vengeance.¹⁰ Nimitz notified Vice Admiral William

⁸Ibid., 42.

⁹Indeed, British intelligence officials, who did not learn of the plan until after its completion, protested the action for this very reason.

¹⁰Some sources suggest that Knox consulted with President Roosevelt as well. There is supporting as well as contradictory evidence for this position. See Hall, 43.

Halsey, commander, South Pacific Area, to proceed with the interception, adding a personal message: "Good luck and good hunting."

Halsey, after consultations, decided to employ the Army Air Force's P-38 fighter for the mission. Since the P-38 did not have the range to conduct the mission, they were specially fit with long-range fuel drop tanks which arrived in Guadalcanal from Australia on the evening before the operation. Halsey selected Major John W. Mitchell, commander of 339 Squadron in Guadalcanal, as mission flight leader. Mitchell received a top secret telegram.

Washington Top Secret. Secretary Navy to Fighter Control Henderson. Admiral Yamamoto accompanied chief of staff and seven general officers Imperial Navy including surgeon grand fleet left Truk this morning eight hours for their trip inspection Bougainville bases stop . . . Squadron 339 P-38 must at all costs reach and destroy Yamamoto and staff morning April eighteen stop . . . intelligence stresses admiral's extreme punctuality stop President attaches extreme importance this operation stop.¹¹

Mitchell selected an intercept point over Bougainville. He calculated a 7:20 a.m. take-off time in order to be in position ready for the attack at precisely 9:35 a.m. He designated four men as shooters to engage Yamamoto's flight: First Lieutenants Thomas Lanphier, Rex Barber, Besby Holmes and Ray Hine.¹² Mitchell and thirteen others would fly top cover.

¹¹Cited in Potter, 303-304.

¹²Lanphier and Barber, who were scheduled to rotate, were held over for this specific mission because of their demonstrated aggressiveness. Holmes and Hine replaced First Lieutenants James McLanahan and Joseph Moore, whom Mitchell had originally selected as shooters. McLanahan's P-38 blew a tire on takeoff, and Moore found he could not draw fuel from his drop tank.

The first P-38 took off at 7:20 a.m. to the minute. After an uneventful, 410 mile flight just above the thirty foot waves, First Lieutenant Douglas Canning broke radio silence for the first time: "Bogeys, 11 o'clock high." Yamamoto's flight, which consisted of two Betty bombers cruising at 4,500 feet and six Type 32 naval Zeros (Zekes) at 6,000 feet, was right on schedule.

Lanphier and Barber rose to meet the bombers.¹³ They had closed to within one mile of the Japanese flight before the Japanese pilots spotted the P-38s beneath them, dropped their fuel tanks, and dove to repel the American fighters. The two bombers streaked toward the safety of the jungle, leveling out at 200 feet, just above the tree-tops. Lanphier nosed over at 400 m.p.h. and engaged Yamamoto's plane with cannon and machine-gun fire. The bomber's starboard engine burst into flames. As Lanphier released a second burst of fire, the Admiral's plane crashed into the jungle, bounced once and exploded.

In order to determine the significance of Operation Vengeance, we must first clarify the parameters for success. If the killing of Yamamoto was designed primarily to eliminate an exceptional military threat or, as the mission's name suggests, revenge, then the mission was a resounding success. Admiral Yamamoto, the architect of Pearl Harbor was dead.¹⁴ Halsey sent a personal

¹³Holmes's fuel tank failed to drop. He turned southeast along the coast performing violent maneuvers to shake it free, accompanied by his wingman, Ray Hine.

¹⁴A doctor's post mortem revealed that Yamamoto had been shot through the head and shoulder, and was probably dead prior to impact. With the exception of Hine, all of the American pilots escaped the vengeful Zekes with only minor

message to Henderson Field:

Congratulations Major Mitchell and his hunters. Sounds as though one of the ducks in their bag was a peacock.¹⁵

Lanphier was promoted to the rank of captain, awarded the Navy Cross, and received a personal congratulations from President Roosevelt.

If we assume, on the other hand, that the ultimate goal of any mission was to win the war, the task of determining the success or failure of this operation becomes more difficult. Killing Yamamoto may have won the allies a military or psychological advantage. But this conclusion is difficult to defend with any certainty. It is also possible that the death of a beloved leader in this manner may have increased Japan's will to resist. Japanese propagandists, who had claimed from the outset of the war that the only options of the Japanese people were to fight or die, could have exploited this event. Operation Vengeance seemed to confirm that the allies were taking no prisoners.

3. Was Yamamoto Assassinated?

Determining whether Operation Vengeance was an assassination depends completely upon one's definition. This is evident in the argument of Paul B. Woodruff, chairman of the philosophy department at the University of Texas at Austin, who contends that the mission was not an assassination since certain

damage to their aircraft. Least damaged was Lanphier's plane, with only two bullet holes in the horizontal stabilizer. See Potter, 309.

¹⁵William Halsey quoted in Potter, 308.

ingredients were not present.¹⁶ In an assassination, according to Woodruff, the action must take place outside the theater of war by non-uniformed personnel behind the lines who gained access by stealth to an enemy leader (who may also be non-uniformed) and killed him.

Woodruff takes his definition from the pages of the Castro scenario. In the absence of the assassination ban, this definition would be adequate, and Woodruff's conclusion that the mission was not an assassination would be correct. The planners of Operation Vengeance were not bound by the executive order. But the government official, who is constrained by an assassination ban which contains no definition and makes no distinction between times of peace and times of war, cannot afford to circumscribe the meaning of assassination so narrowly.

The Yamamoto mission targeted a specific person--not forces, weapons or installations. Officials of the U.S. government hand picked the "assassins" and specifically modified their weapons. The execution order was issued from at least as high as the office of the Secretary of the Navy. Operation Vengeance was political assassination, if not in the classical sense, then in the context of the assassination ban.

B. THE PHOENIX PROGRAM

The U.S. pacification effort in Vietnam evolved from the recognition that firepower alone would not defeat the communist insurgency. The Phoenix

¹⁶For a detailed presentation of Woodruff's Argument, see Hall, 52.

program was perhaps the most controversial element of pacification.¹⁷ Phoenix was an American-conceived anti-infrastructure effort. It was an integrated program designed to use sound intelligence to track and "neutralize"¹⁸ specifically targeted cadre. To some, it was a program of secret murder.

1. Origins

It was never clear to American war planners whether the center of the war lay in Hanoi or in the guerrilla movement in South Vietnam. The enemy, however, understood from the outset the paramount importance of population control. The primary thrust of the communist effort, therefore, was to extend a clandestine presence throughout the countryside. It accomplished this with the development of a shadow political infrastructure, a miniature government reproduced down to the village level throughout South Vietnam.¹⁹ The American bureaucracy dubbed this presence "the Viet Cong Infrastructure" (VCI).

Unlike the military,²⁰ the CIA was quick to acknowledge the importance of the political infrastructure. By the end of 1967, the government of South

¹⁷In mythology, phoenix was a beautiful bird with the ability to rise from death and defeat into the glory of rebirth and victory. No allusion, however, was intended. Phoenix was the best English approximation of the Vietnamese mythical bird Phung Hoang which represented grace, virtue, peace, and concord. Both Phoenix and Phung Hoang refer to the same program.

¹⁸Phoenix defined neutralized as rallied, captured, or killed.

¹⁹Dale Andrade, Ashes to Ashes (Lexington, Mass: Lexington Books, 1990), 1.

²⁰General Wesmoreland, who served as COMUSMACV (Commander, U.S. Military Assistance Command, Vietnam) from June 1964 to June 1968, made it clear that he regarded the VCI as secondary to main-force units.

Vietnam (GVN) adopted a CIA-conceived program aimed at eliminating the VCI through a direct attack on targeted members.²¹ This program was originally called the Intelligence Coordination and Exploitation (ICEX) Program. The purpose of ICEX was to "coordinate and give new impetus to U.S. and GVN operations, both intelligence collection and processing and action operations, directed toward elimination of the Viet Cong infrastructure."²² ICEX was an intermediate phase, a trial and error period. As had been the plan from the outset, ICEX evolved into Phoenix.

Ironically, it was the enemy that finally made the fledgling Phoenix program a reality. The Tet Offensive jolted South Vietnamese President Nguyen Van Thieu into realizing that it had been the existence of the Viet Cong infrastructure that had allowed the offensive to occur.²³ Thieu officially endorsed the Phoenix program on 1 July 1968 in Presidential Decree Number 280-a/TT/SL.

Articles 3 and 5 of the decree are important. Article 3 defined who was or was not a member of the VCI. "The Viet Cong Infrastructure is all Viet Cong, political and administrative organizations established by the Communist Party

²¹Chieu Hoi (Open Arms) was another element of the effort to eliminate the VCI. Chieu Hoi sought to persuade members of the Viet Cong political apparatus to surrender through various rewards and protection against punishment.

²²MACV Directive 381-41, "Military Intelligence: Coordination and Exploitation for Attack on the VC Infrastructure (C); Short Title: ICEX," 9 July 1967, cited in Andrade, 61.

²³Andrade, 72.

which goes under the name People's Revolutionary Party, from the cities to the countryside."²⁴ Specifically excluded from this set were military units. Technically, the targets of the Phoenix program were civilians.

Phoenix was a central clearinghouse for intelligence collation and targeting information; it contained no mechanism for actually hunting down the VCI. Article 5 established the action arm of Phoenix. The primary organizations assigned to the task of conducting anti-infrastructure operations were the National Police and the Provincial Reconnaissance Units (PRUs), indigenous paramilitary groups established by the CIA in 1964. The decision to emphasize police efforts owed much to British experience in Malaya where the British colonial government employed the police effectively.²⁵ Very few American troops actively participated in Phoenix operations. Notable exceptions were U.S. Navy SEALs (Sea, Air, and Land teams).

2. Effectiveness

Evaluating the effectiveness of Phoenix is problematic. American planners generally relied on neutralization quota figures. Results were tallied and sent to Saigon, where the verdict of success or failure was based on numbers.²⁶ Judging

²⁴MACV/MACCORDS, "Phung Hoang Standard Operation Procedure," 27 July 1968, 3, cited in Andrade, 73.

²⁵Douglas S. Blaufarb, The Counterinsurgency Era (New York: The Free Press, 1977), 246.

²⁶Andrade, 124.

by neutralization figures alone, it would seem that the program was successful. From 1968 through July 1972, a total of 81,740 had been neutralized.²⁷

This technique for passing judgment on the success or failure of the Phoenix program provides only a partial picture. The enemy provided the best barometer of the program's effectiveness. Captured enemy documents and interrogation reports indicate the profound hardships that the Phoenix program was placing on the VCI specifically and the enemy effort in general. One captured document outlined the Phoenix program in one region and noted that:

At present, personnel of the Phoenix intelligence organization are the most dangerous enemies of the Revolution in suburban and rural areas. They have harassed us more than any other group and have caused us many difficulties.²⁸

Local communist cadres were ordered to "capture and annihilate" anyone associated with the Phoenix program "at all costs."²⁹ The Viet Cong assigned special teams to assassinate Phoenix personnel. Unlike Phoenix, these teams made no attempt to capture their targets.³⁰ Even today, Vietnamese officials continue to maintain that Phoenix was the one program they truly feared. One government official commented that:

²⁷See Ibid., Table A-1.

²⁸"Phung Hoang 1970 End of Year Report," 11 May 1975, 45, cited in Ibid., 270.

²⁹Stephen T. Hosmer, Viet Cong Repression and its Implications for the Future (Lexington, Mass: Lexington Books, 1970) 21.

³⁰Andrade, 265.

there were only two occasions when we were almost entirely wiped out. The first was in 1957-58, when Ngo Dinh Diem had much success in eliminating our infrastructure . . . [The second was] your pacification program which was very successful, especially Phung Hoang. Your concepts were generally good. It was the implementation that often went wrong.³¹

Criticism regarding the program's implementation generally falls into three areas. First, while the figures cited above may seem quantitatively impressive, many question the quality of those VCI neutralized. In 1968, for example, less than one percent of the neutralized VCI held positions of top leadership.³² The years 1970-1971 saw no significant changes, with less than three percent of all VCI neutralized holding positions above the district level.³³

A second criticism is that most of the VCI neutralizations resulted from conventional military sweeps rather than specific targeting. The Police Special Branch (PSB), the intelligence-gathering arm of the National Police, failed to generate the intelligence necessary to target individual VCI.³⁴ More than anything, this was due to incompetence and corruption within the PSB.³⁵ It is significant, however, that other programs within Phoenix, the PRUs and the

³¹"We Were in Desperate Shape," Time, 29 February 1988, 17.

³²Richard A. Hunt and Richard H. Shultz, Lessons from an Unconventional War (New York: Pergamon Press, 1982), 104.

³³Not all analysts agree with this criticism. Indeed, some argue that it was more important to go after low- and middle-level cadre since these were the individuals who were in direct contact with the population. For a detailed presentation of this argument see Andrade, 86.

³⁴*Ibid.*, 168.

³⁵Blaufarb, 247.

SEALs most notably, managed to rise above the problems of poor intelligence by creating their own networks.

A third problem which plagued Phoenix was the inadequacy of the criminal justice system. Innocent people sat in jail for weeks and sometimes months before they were interrogated, providing a willing pool of converts to the Viet Cong cause. On the other hand, the average sentence given to proven VCI was less than one year.³⁶ Furthermore, the detention system, which allowed VCI suspects to run loose among common criminals, provided hardcore VC with an ideal opportunity to recruit new members.

3. Phoenix and Assassination

In the final analysis, Phoenix was a failure. The infrastructure survived. The essence of the Phoenix failure, however, lay not in these shortcomings. Phoenix arrived too late in the war. Given time, Phoenix could have overcome its problems. Ultimately it was perceptions of the American public which killed Phoenix. Assassination became a label which, to this day, clings to the Phoenix program. After the massacre of Vietnamese civilians at My Lai came to public attention in November of 1969, the anti-war movement, the media and Congress focussed full attention on the allegations that Phoenix was a program of assassination. By 1972, rather than suffer additional public opinion damage, American officials opted to recommend dissolution of the program.

³⁶Andrade, 202.

Was the Phoenix program legitimate conflict management or a program of planned assassination? Both descriptions contain elements of truth. As we saw in the previous example, the distinction between assassination and legitimate war fighting has little meaning in wartime. The distinction is even less clear in an unconventional war where the lines between combatants and noncombatants are unclear.

However, when considered in the context of the vague assassination ban which today's policy makers must regard, the charge that the Phoenix program engaged in assassination is justifiable. Specific targeting was the essence of the Phoenix attack. Despite emphasis placed on capturing VCI, Phoenix ran operations which targeted specific individuals--operations which often resulted in the demise of those targeted. After a successful raid a SEAL lieutenant told a reporter:

We like to grab people. That's of real value. Killing them does no good. Any time we make a hit we're there to take them alive. But once we're seen, we're compromised. Our primary mission ceases and we turn to our secondary mission--killing VC.³⁷

In fact, killing accounted for nearly one third of all neutralizations from 1968 through the end of July 1972.³⁸ Furthermore, these killings were not always incidental to an effort to capture the enemy. When asked during congressional

³⁷"Web-Foot Warriors," Pacific Stars and Stripes, September 1967.

³⁸This percentage was calculated from statistics provided by Andrade, Table A-1.

hearings if he could deny that Phoenix had ever engaged in the premeditated killing of specific individuals, William Colby, who took control of the U.S. pacification effort in 1968, replied, "No, I could not say that."³⁹

"Assassination" does not apply to a man killed in an ambush. That is war. But because the Phoenix program took a rifle shot approach, specifically identifying its targets, assassination was the charge. "The distinction seemed to be," writes Dale Andrade, "that if the attackers did not know the identity of those they killed it was war; if they did, it was assassination."⁴⁰ This distinction, although seemingly arbitrary, fits well into our criteria for assassination vis-a-vis the executive order.

C. CONCLUSIONS

The warfighting imperatives associated with Operation Vengeance and the Phoenix program lend legitimacy to these efforts. Operation Vengeance was strictly a military mission. Yamamoto was in uniform in a military plane when U.S. military aircraft attacked him overtly in a theater of war. Phoenix was also a wartime program. Although its victims were technically non-military, they had a decidedly military and malevolent function. The Castro case lacks this sense of legitimacy. Although some of the most critical moments of the Cold War centered on Cuba, the U.S. relationship with Cuba was nominally peaceful.

³⁹William Colby, Lost Victory, (Chicago: Contemporary Books, 1989), 332.

⁴⁰Andrade, 284.

Castro often wears a uniform, but he is a civilian. His would-be assassins had no military affiliation, and their techniques most closely approximated those of criminals.

Vengeance and Phoenix differ not only in degree from the Castro and Lumumba examples, but also in kind. Nevertheless, the imprecise assassination ban fails to differentiate. Should the United States continue to embrace such a clumsy restriction?

President Ford's decision to issue the original executive order can hardly be criticized. So repugnant were the revelations of the plots to assassinate Castro and Lumumba that they threatened to seriously damage America's self-image, already reeling from the blows of Vietnam and Watergate. Ford had to act decisively not only to avert future indiscretions, but also to restore American credibility throughout the world.

But in his urgency, Ford may have thrown out some babies with the Cuban bath water. There are moral dimensions to American foreign policy. Certainly the Castro and Lumumba examples represent an abandonment of these values. But the Phoenix and Yamamoto cases provide examples of capabilities which the United States may not wish to forfeit--capabilities it may have lost as collateral damage of the assassination ban.

Chapter Four examines more closely anti-infrastructure operations, military leadership targeting, and other capabilities which the U.S. may have chosen to forgo. But first we will recover our chronological perspective. The assassination

ban arrived on the scene of American international relations four years after the demise of the Phoenix program. Chapter Three discusses how the prohibition came to be.

III. DEMOCRACY OVERREACTS: THE EVOLUTION OF THE BAN

Harry S. Truman once commented: "You see, the way a free government works, there's got to be a housecleaning every now and then." Seymour Hersh's story about CIA indiscretions heralded such a housecleaning. This chapter details over a year of investigations which followed the Hersh report, a period which Loch Johnson designated as the "season of inquiry."¹ Although Hersh did not directly reveal the assassination plots, the inextricable relationship between the media, public opinion and the assassination ban, makes his story a natural stepping off point for this discussion.

President Ford was the first to act on Hersh's story. On January 4, 1975, Ford appointed Nelson Rockefeller, then Vice President, to head an eight-member commission (the Rockefeller Commission) to investigate the CIA.² Sensitive to the delicate nature of the testimony, the commission conducted its investigation in private and reported directly to the President.

William Colby, Director of Central Intelligence (DCI) saw Ford's investigation as an orchestrated attempt by the President to appease public demands for an

¹Loch K. Johnson, A Season of Inquiry (Lexington, KY: The University Press of Kentucky, 1985), 11.

²The Commission included: Vice President Nelson A. Rockefeller (R), John Connor (D), C. Douglas Dillon (R), Erwin N. Griswold (R), Ronald Reagan (R), GEN Lyman L. Lemnitzer, Edgar F. Shannon (D), and Joseph Lane Kirkland (D).

investigation while protecting embarrassing secrets from the scrutiny of a Congressional inquiry. Colby knew that Ford would not be able to contain the momentum. "I was convinced that the blue ribbon commission would not be the end of the matter," said Colby, "and that the President's carefully circumscribed investigation of CIA's domestic affairs would not stop Congress from conducting its own probe."³

Colby recognized that he was entering into a fight for the survival of the CIA, a battle which the agency would have to fight alone. He also determined that prolonged, involuntary exposure of agency misconduct could destroy the agency and that voluntary exposure might save it.⁴

Over objections from the White House, Colby "came clean" about the CIA's past mistakes, making it clear all along that the agency had since reformed.

I discovered that I was being somewhat too open and candid for some people's tastes. After my second or third appearance, the Commission's Chairman, Vice President Rockefeller, drew me aside into his office at the Executive Office Building and said in his most charming manner, "Bill, do you really have to present all this material to us? We realize that there are secrets that you fellows need to keep and so nobody here is going to take it amiss if you feel that there are some questions you can't answer quite as fully as you seem to feel you have to." I got the message quite unmistakably, and I didn't like it.⁵

³William Colby and Peter Forbath, Honorable Men: My Life in the CIA (New York: Simon and Schuster, 1978), 399.

⁴Ranelagh, 588.

⁵Colby and Forbath, 400.

It appears that Colby had designed a *fait accompli*. Shortly after the Commission had begun, Colby volunteered that the CIA had been involved in plans to assassinate certain foreign leaders. This information soon became public.⁶ Now, in order to attack the CIA, Ford and Congress would have to attack the reputations of former presidents and members of Congress, Republicans and Democrats alike.⁷

On May 25, 1975, the Rockefeller Commission concluded its investigation. The Commission had compiled 2,900 pages of sworn testimony from fifty-one witnesses. The 299-page report substantiated the Hersh report of massive CIA spying on U.S. citizens. The Rockefeller Commission was also the first officially to acknowledge the assassination plots. The Commission chose, however, not to investigate the issue further, despite Ford's earlier order to extend its life by two months for this purpose. On March 10, 1975, the White House press secretary announced that these allegations might be better dealt with by Congress, with its "broader charter."⁸

⁶Ford himself was responsible for leaking the assassination plots. On January 16, 1975, Ford confessed to the publisher of the New York Times, Arthur Ochs Sulzberger, that the Rockefeller Commission's mandate was strictly limited to CIA activities within the United States and he didn't want anybody on it who might stray into the recesses of CIA history and stumble on the assassination plots. Although the New York Times chose to sit on the story, the story leaked. On February 28, CBS television news correspondent Daniel Schorr reported Ford's blunder on the Evening News.

⁷Ranelagh, 631.

⁸Colby and Forbath, 401.

A. CONGRESSIONAL ACTION

"The executive branch cannot, with sufficient credibility, investigate itself," said Senator Frank Church (Democrat, Idaho). He added that he hoped that the Rockefeller Commission would complete its investigation quickly and make its record available to Congress for "the more comprehensive congressional investigations to come."⁹

Thus the Senate established the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, chaired by Frank Church. The House established a similar committee, but quickly encountered difficulties.

1. The Nedzi and Pike Committees

The House reacted to Hersh's revelations by establishing a Select Committee on Intelligence, chaired by Lucien N. Nedzi (Democrat, Michigan) in February 1975. But the committee soon collapsed on itself when liberal Democrats on the committee objected to Nedzi's chairmanship. The objection was raised as a result from the disclosure that the agency had secretly briefed Nedzi on activities subsequently investigated by the Rockefeller Commission, and that he had taken no action.¹⁰ Unable to resolve its differences, the panel was dissolved and not reconstituted until July.

⁹Washington Post, 16 March 1975.

¹⁰"Central Intelligence Agency: Appointment of Presidential and Congressional Committees of Investigation," Keesings Contemporary Archives, 1975, 27260.

The House transferred the job to a new committee with the same name and mandate, but a slightly different membership. Now under the leadership of Otis Pike (Democrat, New York), the House Committee focused mainly on the costs and risks of the intelligence effort and on the quality of its product. But the Pike Committee fared only slightly better than its predecessor. In part, this was due to lack of cooperation from the executive branch. As a result of the perception that the committee had made its mind up to secure the dismantling of the agency before it heard the evidence, President Ford was particularly miserly with respect to Pike's demands for documents and information.¹¹

A clear majority in the House (246 members) voted not to publish the committee's report until it was censored by the White House. A copy of one of the drafts of a full report, however, leaked to CBS correspondent Daniel Schorr, who then had parts of it published in the Village Voice. The House spent much of the rest of the year investigating itself.¹²

The House Committee's work thus ended in great controversy; its most lasting legacy would be a backlash reaction against congressional involvement in intelligence matters. The question of the CIA assassination plots was never investigated. In July 1977, the House finally voted to create a permanent Select Committee on Intelligence. The House Committee had been too divided to be

¹¹Ranelagh, 594.

¹²John M. Oseth, Regulation and U.S. Intelligence Operations (Lexington, KY: The University Press of Kentucky, 1985), 59.

effective. The Senate Committee, on the other hand, was well organized, well staffed and abundantly funded.

2. The Church Committee

On January 21, 1975, Rhode Island Senator John O. Pastore introduced Senate Resolution 21 establishing the Senate Select Committee on Intelligence:

In recent weeks and in recent months there have been charges and counter charges spelled out on the front page of every newspaper in this country. The matter has been discussed over television and radio. The people of America are confused. They are asking themselves, "What is actually happening to these organizations which are essential for the security and survival of our great Nation?"

In order to clear the air, in order to cleanse whatever abuses there have been in the past, so that we can recite, once and for all, the proper parameters within which they can function, I am afraid we will do irreparable harm to the security and survival of the country unless we do this.¹³

Following two days of debate, Senate Resolution 21 passed eighty-two to four.¹⁴

The five members selected by the GOP for the proposed eleven-man committee included John Tower (Texas), Barry Goldwater (Arizona), Charles Mathias (Maryland), Richard S. Schweiker (Pennsylvania), and Howard H. Baker, Jr. (Tennessee). The six Democrats chosen were Frank Church (Idaho), Philip A. Hart (Michigan), Walter F. Mondale (Minnesota), Walter D. Huddleston

¹³Congressional Record, 21 January 1975, 596F.

¹⁴Four southern conservatives voted against the creation of the panel: Jesse A. Helms (Republican, North Carolina), William L. Scott (Republican, Virginia), Strom Thurmond (Republican, South Carolina), and Herman E. Talmadge (Democrat, Georgia).

(Kentucky), Robert Morgan (North Carolina), and Gary Hart (Colorado). Church convinced Majority Leader Mike Mansfield to appoint him as chairman.¹⁵ Henceforth, the committee became known as the Church Committee. Tower was Minority Leader Hugh Scott's choice for the vice-chairmanship.

The committee membership represented a broad selection. The ages of the members ranged from thirty-eight (Gary Hart) to sixty-six (Barry Goldwater). Although southern Senators were in the majority, all geographic regions were represented. There were, however, two notable skews in the committee membership. First, past voting records indicated that there were decidedly more liberals. Only Tower, Goldwater, Baker, and Morgan had conservative voting records.¹⁶ The second significant imbalance was that the committee was comprised of seven junior members. Three members, Huddleston, Morgan, and Gary Hart, were freshmen. Four others, Mondale, Baker, Mathias, and Schweiker, were only in their second terms. The implications of the lack of seniority in the committee is discussed later.

Although not a part of the committee's statutory mandate, the allegation of CIA assassination plots became its priority. There was concern among the staff

¹⁵According to the Christian Science Monitor (3 February 1975), Church "almost knocked down Mansfield's door to get [the chairmanship]." Church's presidential ambitions for 1976 or 1980 were no secret, and chairmanship was an important honor.

¹⁶Based on the voting scale developed by the Americans for Democratic Action (ADA), a liberal group that follows and evaluates congressional voting patterns. See Congressional Quarterly Weekly Report, 8 December 1974, 8-9.

and in the media that taking on the assassination probe would divert the attention of the committee away from the more important issues which had triggered the inquiry in the first place. One key staffer suggested that the assassination issue was a CIA setup intended to focus the committee's interest away from other subjects.¹⁷ Gregory Treverton, another Church Committee staffer, joked that "the only successful CIA assassination plot has been against the Church Committee itself."¹⁸ But Church saw the subject of assassination as extremely important and worthy of in depth examination. "Had we handled [the assassination report] with any less care," said Senator Church, "we would have lost all credibility, since this was by far the most infamous and extreme action taken by the CIA."¹⁹

In order to expedite the probe into the assassination plots, Church established a special Subcommittee on Assassination, comprising himself, Tower, Gary Hart, and a half-dozen staff aides. Specifically, the subcommittee sought to answer four questions regarding the assassination plots. First, were United States officials involved in any way in plots to assassinate foreign leaders? Second, did United States officials assist foreign dissidents in a way which significantly contributed to the killing of foreign leaders? Third, where there was involvement by United States officials in assassination plots, were such activities authorized

¹⁷Johnson, 55.

¹⁸Gregory F. Treverton, Covert Action (New York: Basic Books, Inc., Publishers, 1987), 24.

¹⁹Taylor Branch, "The Trial of the CIA," New York Times Magazine, 12 September 1976, 115.

and, if so, at what levels? Finally, if not authorized, were the assassination activities perceived by those involved as lawful?²⁰

3. Church Committee Findings

Over the objections of the Ford administration and three committee Republicans (Tower, Baker, and Goldwater), the Church Committee released its findings in an interim report, Alleged Assassination Plots Involving Foreign Leaders. The report detailed CIA involvement in assassination attempts against five foreign leaders.²¹ This section summarizes those findings.

The committee determined that no United States official was ever involved in the killing of a foreign leader. But it was not for lack of trying. The report concluded that the CIA had directly plotted the deaths of two leaders, Premiers Fidel Castro and Patrice Lumumba. Three others assassinations, General Rafael Trujillo of the Dominican Republic, President Ngo Dinh Diem of South Vietnam and Chilean General Rene Schneider, were investigated, but the committee could find no direct link between their deaths and the CIA.²²

The committee also endeavored to determine the extent of presidential

²⁰Congress, Senate 1975, 4.

²¹Goldwater's rejection of the Church committee's decision to make the interim report public was scathing. He called the publication of the report a "spectacle of public self-flagellation" that would denigrate our reputation abroad and "tell the world we are retreating into isolationism." See Johnson, 132. In a compromise with the administration, the committee agreed to delete the names of twenty of the officers. See Trevorton, 244.

²²See Congress, Senate 1975, 4-6.

knowledge and involvement in the plots. This point had profound implications. If the CIA conceived and conducted these operations without authority from the serving president or his immediate lieutenants, then the agency was indeed a "rogue elephant on a rampage," as Church had earlier charged.²³ If the orders did originate in the White House, then the image of the presidency itself was on trial.

Establishing the chain-of-command was among the committee's greatest challenges. The events in question occurred up to fifteen years ago; memories had faded. With one exception, they occurred during the administrations of presidents who were now dead. Other senior administration officials were also dead. Among those still alive, some were clearly guided by a sense of loyalty to their former bosses.²⁴ Others were, no doubt, guided by a sense of self-preservation. Finally, the committee was dealing with a highly sensitive topic in a highly secretive organization. The written record was necessarily thin. Even if the White House was explicitly in command of these operations, there would be no documentary evidence giving explicit commands.

Much of the testimony which the committee heard was contradictory. The picture which they pieced together was fragmentary. In the end, the committee had to confess that it had no conclusive evidence that the CIA had indeed

²³Senator Church first used this metaphor when the assassination plots were initially revealed.

²⁴Johnson, 58.

behaved as a "rogue elephant," nor could it provide conclusive evidence that any president had ever directly ordered an assassination attempt.²⁵

But the smoking gun was provocative. Although the evidence was inconclusive, there were indications of presidential authority which may have passed the test of "reasonable doubt." The report found "reasonable inference" that Eisenhower authorized the Lumumba assassination. It also suggested that Robert Kennedy, and possibly the President himself, may have known of attempts to kill Castro after the fact and did not discourage future attempts.

The committee's response to the incomplete record was to leave the question of authority hanging. But the committee felt it had identified vital problems within the executive branch: operational authorization procedures were so secretive and unclear that it would have been possible to set in motion a plan to assassinate a foreign leader without explicit presidential approval. Furthermore, administration officials failed to rule out assassination as a tool of foreign policy, to make it clear to their subordinates that assassination was impermissible, or to inquire further after receiving indications that assassination was being considered.²⁶

Two obstacles proved particularly confounding in establishing what the White House knew about the assassination plots and when it knew it: "plausible

²⁵Thomas Powers, The Man Who Kept Secrets (New York: Alfred A. Knopf, 1979), 145.

²⁶Oseth, 60.

denial" and the use of euphemism. Establishing "plausible denial" ensures that certain acts are perpetrated in such a way that the U.S. Government cannot be blamed. This "doctrine" had been expanded from its initial purpose to the internal decision making process. The CIA had applied the concept of "plausible denial" to insulate higher officials, particularly the President, from knowledge, and hence responsibility for a compromised covert operation. This placed elected officials on the periphery of the decision-making process.. In his testimony, Richard Helms told the Church Committee:

I just think we all had the feeling that we were hired out to keep these things out of the Oval Office . . . nobody wants to embarrass a President of the United States by discussing the assassination of foreign leaders in his presence.²⁷

In the language of the interim report, this doctrine represented "the antithesis of accountability."²⁸

One technique to ensure "plausible denial" was to use euphemism in discussions with senior officials about assassination. This practice was best summarized by Senator Mathias during the testimony of Richard Helms:²⁹

Mathias: Let me draw an example from history. When Thomas A. Beckett was proving to be an annoyance, as Castro, the King said, "who will rid me of this man." He didn't say to somebody, "go out and murder him." He said, "who will rid me of this man," and let it go at that.

²⁷Congress, Senate 1975, 150.

²⁸Ibid., 277.

²⁹Ibid., 316.

Helms: That is a warming reference to the problem.

Mathias: You feel that spans the generations and the centuries?

Helms: I think it does, sir.

According to Richard Bissell, the CIA's Deputy Director for Plans (DDP) at the time of the first plots, "there was a reluctance to spread, even on an oral record, some aspects of these operations."³⁰ As a result, "assassination," "murder" and "kill" were often replaced by "get rid of," "neutralize" and "eliminate." Euphemism created an environment ripe for misunderstanding. They precipitated vague orders with unpredictable responses. In Mathias's allusion, King Henry later claimed that he had not ordered the killing and that he had been misunderstood. In the haze of euphemism, then, it is possible that presidential authorization was assumed, but never actually given.

Another uncertainty resulted from "floating authorizations." Once approval for a covert action was given, the CIA "floated" this approval from year to year and administration to administration, without explicit renewal. This was common practice even within the agency itself. For example, John McCone, successor to Allen Dulles as DCI, was never told of agency ties to the Mafia. Dulles's approval of the relationship was sufficient.³¹

³⁰Ibid., 95.

³¹Johnson, 59.

B. POLICY REACTION

With respect to the assassination issue, policy output ran contrary to the rhetoric. Senator Goldwater had flatly refused to sign the Church Committee's final report because of what he considered "their unbearably self-righteous, moralizing tone."³² Yet in the final analysis, Congress enacted no legislation prohibiting assassination. President Ford, on the other hand, championed the need for a strong CIA throughout the investigations. Yet Ford's policy decision profoundly influenced U.S. capability.

The Church Committee had recommended that Congress enact new charters for the CIA and other intelligence agencies to prevent a recurrence of past abuses. It specifically condemned the use of assassination as a tool of foreign policy and recommended that political assassinations be prohibited by statute.³³ Senator Huddleston introduced such a comprehensive charter. If passed, the National Reorganization and Reform Act of 1978, S. 2525, would have specifically prohibited the assassination of foreign officials in peacetime.³⁴ S. 2525 was never passed.

³²Bob Woodward, Veil: The Secret Wars of the CIA 1981-1987 (New York: Simon and Schuster, 1987), 45.

³³Congress, Senate 1975, 257.

³⁴Stephen Dycus, Arthur L. Berney, William C. Banks, and Peter Raven-Hansen, National Security Law (Boston: Little Brown and Company, 1991), 322.

Indeed, the legislative legacy of the Church Committee was meager.³⁵ Congress enacted no legislation forbidding assassination. Some members questioned the wisdom of a flat ban on assassinations. Despite his pervasively moralistic tone, Church himself would not rule out assassination as unacceptable in all cases:

It is sometimes asked whether assassination should be ruled out absolutely, such as in a time of truly grave national emergency. Adolf Hitler is often cited as an example. Of course, the cases which the committee investigated were not of that character . . . So we are not talking about Adolf Hitler or anything of that character, nor are we condemning actions taken in a grave national emergency when the life of the republic is endangered.³⁶

The institutional legacy of the Congressional committees, on the other hand, was an important one. Both houses established permanent select committees. The committees include members who sit simultaneously on the Armed Services, Foreign Affairs, Judiciary, and Appropriations committees. Because these committees could now relinquish their oversight function without feeling entirely cut out, the process was streamlined.³⁷

The Intelligence Oversight Act of 1980 is also attributable to the Congressional committees.³⁸ Under this act, the executive branch had to contend with statutory

³⁵To a large extent the Church Committee's recommendations were implemented by executive orders. See *Ibid.*, 324.

³⁶Congress, Senate 1975, xix.

³⁷Treverton, Covert Action, 247.

³⁸The Oversight Act represents what the Senate Intelligence Committee was able to salvage from S. 2525. See Dycus, Berney, Banks and Raven-Hansen, 324.

reporting requirements on intelligence far more comprehensive than those of the Hughes-Ryan Amendment.³⁹ This act in conjunction with permanent congressional oversight committees, sought to tame the "rogue elephant" without imposing structure which might not be responsive to future crises. President Ford's influence was not as subtle.

Ford, in a message to Congress on February 18, 1976, announced that he had issued an executive order restricting the power of the intelligence agencies. Ford's announcement, noted Crosby Noyes of the Washington Star, was "a preemptive end-run on the Congress."⁴⁰ With Executive Order 11905, the executive branch moved to the offensive, taking the initiative of intelligence reform away from Congress. It was an effort to prevent the dismantling of the CIA.

Congress criticized the President for largely preserving the powers of the CIA. The order did not prohibit covert operations. But Ford took one step that Congress was unwilling to take. The thirty-six page executive order, which came into force on March 1, 1976, contained a single sentence specifically prohibiting assassination: "No employee of the U.S. Government shall engage in, or conspire

³⁹Johnson, 256.

⁴⁰Noyes' speculation that the executive order was a preemptive act is compelling. But this prompts us to further speculate how Congress would have reacted in the absence of the executive order and, specifically, in the absence of the assassination ban. There is no evidence that Ford's actions influenced Congress whatsoever. The assassination ban may have preempted nothing at all. See Crosby S. Noyes, Washington Star, 24 February 1976.

to engage in, political assassination."⁴¹ Ford had imposed structure. Rather than taming the "rogue elephant," as Congress had done, he diluted its power. He went on to support legislation making assassination a crime. "Since it defines a crime, legislation is necessary."⁴²

C. CONCLUSIONS

The extraordinary outburst of high sounding, moralistic rhetoric on Capitol Hill, and President Ford's ban against assassination reflected the temper of the day. Prior to Vietnam, the virtual absence of congressional interest in covert operations served Congress's interests as much as it did the executive's.⁴³ Oversight was not a politically salient activity. But Vietnam and Watergate served to change this. "All the tensions and suspicions and hostilities that had been building about the CIA since the Bay of Pigs, and had risen to a combustible level during the Vietnam and Watergate years, now exploded," wrote Colby.⁴⁴

It is significant, therefore, that the media heralded this "season of inquiry." The instant fame of Woodward and Bernstein, the Washington Post reporters who broke the Watergate story, whetted the media's appetite for scandal and intrigue in the government. Political assassination made for particularly good press.

⁴¹Keesings Contemporary Archives, "President Ford's Proposals for Reform of Intelligence Agencies," 27714.

⁴²Gerald Ford in a message to Congress, 18 February 1976, in *Ibid.*, 27713.

⁴³Barry M. Blechman, The Politics of National Security (New York: Oxford University Press, 1990), 138.

⁴⁴Colby and Forbath, 402.

Vietnam and Watergate also spawned a new attitude of suspicion on Capitol Hill. The media had led the voting public into an era of grass roots activism; Congress, necessarily, followed. In 1974, a large number of newly elected members won office on mandates of a new morality in government. The allegations of CIA domestic abuses were raised only a month after this aggressive, post-Watergate class had been elected. These new members were the most vocal in demanding a full inquiry. As Colby noted:

It was clear the old power structure of the Congress could no longer control their junior colleagues and hold off their curiosity about the secret world of intelligence. In this new era, CIA was going to have to fend for itself without that long-time special Congressional protection.⁴⁵

Many of these "new era" members found an instant and highly visible pulpit for their moral indignation in the Congressional investigation committees.

For Ford, it was politically risky to do anything other than join the chorus of public and congressional outrage. In a meeting with Kissenger and Colby in December 1974, Ford commented: "In the aftermath of Watergate, it was important that we be totally aboveboard about these past abuses and avoid giving any substance to charges that we were engaging in a cover-up."⁴⁶ The assassination ban contained in Executive Order 11905 was an important part of

⁴⁵Ibid., 403-404.

⁴⁶Gerald Ford, A Time to Heal (New York: Berkley Books, 1980), xxiii-xxiv.

Ford's overall effort to politically distance the presidency from the past and from the CIA, an agency which had lost its public standing.

The assassination ban reflected the temper of the 1970s. The American public no longer perceived the Communist menace as the dominant threat. The greatest threat was internal: a powerful, unchecked and abusive central government. The "season of inquiry" was a sign of the times. But the times and the threats have since changed. As a result, frictions have developed between the ideals contained in the assassination ban and modern threats to the national security. Chapter Four discusses these frictions and advances the arguments of those who advocate rescinding the assassination ban as a means of eliminating them.

IV. POLITICAL ASSASSINATION AS POLITICAL UTILITY

Mark Twain cautions us:

We should be careful to get out of an experience only the wisdom that is in it--and stop there; lest we be like a cat that sits down on a hot stove lid. She will never sit down on a hot stove lid again--and that is well; but also she will never sit down on a cold one any more.¹

This chapter suggests that the assassination ban ignores Mark Twain's wisdom by elevating the lessons of the Castro and Lumumba assassination attempts to a doctrine of statecraft. Certainly these cases, which validate America's long standing and healthy suspicion of power, represent hot stove lids. But how far can policy go in generalizing and instituting the important lessons of these episodes without denying American foreign policy important "cold lid" options?

The discussion presented here pursues this question in three parts. The first section discusses the frictions which developed as a result of the assassination ban and suggests possible explanations. The next section expands on Chapter Two of this thesis by analyzing the warfighting advantages which assassination could provide. The final section details deterrent effects which the United States may have forfeited as a result of the declared prohibition.

¹Mark Twain quoted in Paul Seabury, "Moral Purposes and Philosophical Bases of American Foreign Policy," Orbis, Spring 1976, 10.

This analysis directly challenges the efficacy and desirability of an explicit assassination ban. It is, however, an incomplete analysis. Arguments presented in this chapter are strictly utilitarian. They disregard the ideological costs of pursuing national security objectives through seemingly draconian methods. Without considering the ideological dimension of this complex reality, this chapter can do no more than answer a lesser included question: how can assassination serve the U.S. national interest?

A. FRICTIONS

Interpretation of the assassination ban had become increasingly factious as early as the 1980s. Many of the fears and perceptions of the 1970s had become irrelevant. Threats had evolved dramatically, and, as a result, frictions developed between allegiance to ideals represented in the executive order and pursuit of foreign policy vis-a-vis evolving threats to the national security.

Tensions between the ban and demands of *realpolitik* were not immediately apparent. Despite his efforts to distance himself from his predecessor and CIA abuses, Ford could not escape his party's recent past. Jimmy Carter, who made intelligence reform a conspicuous part of his presidential campaign, defeated Ford in 1976 with Water Mondale, a decidedly reform oriented member of the Church Committee, as his Vice-President.

The Carter Administration proved to have no great appetite for covert operations, thus postponing the inevitable clash between the assassination ban

and executive power.² Tension increased, however, with a surge of covert actions in the 1980s. Both Presidents Reagan and Bush reiterated the prohibition against assassination in Executive Order 12333, first issued on December 4, 1981. But the 1970s ban soon proved unacceptably restrictive for the presidential styles of these men.

1. Reagan Tests the Executive Order

The assassination ban received its first test in 1986 when President Reagan ordered the bombing raid on Libya. Thirteen F-111 fighter-bombers flying out of England and twelve Navy A-6 attack planes launched from carriers in the Mediterranean razed military and intelligence targets in and around Tripoli and Benghazi.³ Additionally, four F-111s aimed sixteen, 2000 pound bombs at the Bab al Azizia barracks, Qaddafi's living quarters. Thirty-seven civilians were reported to have been killed or wounded in the raid.⁴ Qaddafi survived the attack.

Despite administration insistence that the raid was not an attempt on Qaddafi's life, many argue that there is reasonable evidence to the contrary. William F. Buckley, Jr., for example, argues that if the raid was not, among other things, an assassination attempt, "then a great many people went to unnecessary

²John Prados, Presidents' Secret Wars (New York: William Morrow and Company, Inc., 1986), 349.

³See George J. Church, "Going to the Source," Time, 28 April 1986, 17-26.

⁴This number includes an eighteen-month-old girl who was reportedly Qaddafi's adopted daughter. Whether this claim is genuine or a propaganda ploy remains uncertain.

pains to try to establish exactly where Qaddafi would be sleeping on the night of April 14, 1986."⁵ At a very minimum, the raid of 14 April meets the criteria for an assassination advanced in Chapter One.

What remains unclear is the extent to which President Reagan was guided by the executive order in selecting the mode of reprisal. Because of the response chosen, even if the bombs had fallen differently, it is an extremely fine, legalistic point whether Reagan was indeed in defiance of the executive order. How does Executive Order 12333 interpret 2000 pound bombs delivered to the known residence of a terrorist sponsor? Administration officials went to considerable lengths to deny that the raid was in fact an execution attempt. "He was not a direct target," explained Secretary of State George Shultz. "We have a general stance that opposes direct efforts of that kind, and the spirit and intent was in accord with those understandings."⁶ The implication is that because the attempt was indirect, the order does not apply.

The frictions between the assassination ban and policy first surfaced because the Reagan Administration chose to push the limits of the prohibition. The reverse was the case under Bush, as the assassination ban became a specific limiter to actions during the first year of his administration.

⁵William F. Buckley, Jr., "Mr. Webster Has it Exactly Wrong," National Review, 24 November 1989, 63.

⁶George Shultz quoted from a 17 April 1986 press conference in "U.S. Exercises Right of Self Defense Against Libyan Terrorism," Department of State Bulletin, June 1986, 15.

2. The Bush Administration Under the Ban

In 1989, President Bush cited the assassination ban as an unreasonable restraint during the bungled attempt on October 3 to oust Panamanian dictator General Manuel Noriega. Criticized by members of the Senate Intelligence Committee for not moving quickly enough to support the coup plotters, Bush contended that U.S. military officers and intelligence agents on the scene had refrained from cooperating too closely with the plotters on the grounds that Noriega might be killed.⁷

This was a reasonable concern based on our criteria. Had Noriega been killed in a U.S. supported coup, then critics of the action would have surely evoked the assassination ban. Although an executive order contains no punitive element, the political costs could have been substantial. Unlike Reagan, Bush, who had just recently assumed office, was unwilling to take this political risk.

It is likely that the assassination ban was once again discussed at the highest levels, if not presidential levels, during the Gulf War. Based on unclassified sources, it is difficult to be certain to what degree Saddam Hussein was targeted before, during, or since the war. What is clear is that strong popular support persists in the United States for pursuing Saddam's downfall or demise.⁸

⁷Towell, 2812.

⁸In polls conducted in February 1991, close to fifty percent of Americans said that the war should not end until Saddam is removed from power. See Stephen Badiansky, "The Real Target?" U.S. News and World Report, 18 February 1991, 20.

Perhaps not since Adolf Hitler has there been a national leader whose assassination would have been more enthusiastically embraced by the American public. President Bush himself made it clear that the problem was not with the Iraqi people, but rather with their leadership. Some public figures wondered aloud why the U.S. did not target Saddam. Air Force Chief of Staff General Michael Dugan, for instance, told several reporters that, in the event of war, the United States would attempt not only to target Saddam, but his family and mistress as well.⁹

Within the Bush Administration, by contrast, any official discussion on the matter was suppressed. Indeed, it was publicly denounced. Secretary of Defense Dick Cheney fired Dugan for his indiscreet remarks. The United States, announced General Norman Schwarzkopf, does not have "a policy of trying to kill any particular individual."¹⁰

Nevertheless, some unclassified evidence exists that efforts to target Saddam himself may have gone beyond the so-called "silver bullet" option, in which Saddam would be killed by a lucky shot, simply because he was in the wrong place at the wrong time. On the first night of the war, U.S. military planners knew of a dozen places where Saddam slept and worked. All were bombed.¹¹ According to a book compiled by U.S. News and World Report

⁹Neil Livingstone, "Assassination: Could We Have Hit Saddam?" Soldier of Fortune, September 1991, 41.

¹⁰Norman Schwarzkopf quoted in Ibid.

¹¹Budiansky, 26.

magazine, Triumph Without Victory: the Unreported History of the Persian Gulf War, contends that the U.S. also tried to kill Saddam in the final hours of the war.¹² According to the book, two, 5000-pound blockbuster bombs failed to catch the Iraqi leader in the bunker that U.S. intelligence thought he was in.

What conclusions should be drawn from these frictions? Simply because a convention is not in robust condition is no cause to conclude that it is moribund. Various conventions governing the conduct of war have historically helped deter, prevent, or terminate conflicts. On this basis alone war conventions deserve guarding against shortsighted pragmatism. But America's lack of commitment to this convention should at least prompt further analysis. Either some aspects of the contemporary situation have changed since the adoption of the assassination ban, or the prohibition was flawed from the outset, an expression of national ideal which could never have been met in practice.

3. Reconsidering Clausewitz

The intellectual foundations of the assassination ban originate in a Clausewitzian world view. In Vom Kriege, Clausewitz describes war as a composite of three elements: governments, armies, and the people. Governments represent the political elements of war and alone hold the power to wage or terminate war. Armies are organizations that serve the government as the instruments for making war. The third vital element in any war consists of the

¹²Stewart M. Powell, "U.S. Botched Bid to Kill Hussein, Book Says," San Francisco Examiner, 12 June 1992, A6.

people, whom, according to Clausewitz, should be excluded from war as far as possible. Assassination, since it targets governments or the people rather than armies,¹³ is not a logical use of force in Clausewitz's trinitarian universe.

The logic of this world-picture is flawed vis-a-vis the Third World and emerging sub-national entities. As Martin van Creveld suggests: "the Clausewitzian Universe is rapidly becoming out of date and can no longer provide us with a proper framework for understanding war."¹⁴ In modern armed violence, distinctions between governments, armies, and the peoples are often less clear. This is manifest in two trends. First, the state has lost its de facto monopoly on organized violence. Sub-national groups, terrorists and insurgents being two examples, are in the ascendant.

The second trend indicating the irrelevance of the Clausewitzian trinity is that leaders and war making organizations, particularly in the Third World, have become indistinguishable.¹⁵ The demise of feudalism and the incipient rise of the modern bureaucratic state led to a situation where most rulers had ceased to exercise direct command over their armies. Wars could be waged through surrogates, ministers of war who were servants of the state, devoted to their ruler yet divorced from his personal agendas. Over time, a code of behavior developed

¹³Military officers of General or Flag rank hold a unique position in this spectrum. While they certainly belong to the armed forces, they also serve a political function.

¹⁴Martin van Creveld, The Transformation of War (New York: The Free Press, 1991), 58.

¹⁵Ibid., 199.

which forbade direct assaults against those responsible for the conduct of war from the top.

The twentieth century has seen gradual obsolescence of these conventions. Third World war making organizations are increasingly constructed along personal and charismatic lines. The distinctions between leaders and the political entities they lead have disappeared or blurred. A tendency has emerged, therefore, to regard such leaders as criminals, "subject to attack, or the threat of attack, as a means of bringing pressure to bear."¹⁶

Another effect of the convergence of leaders and their war making organizations is that the goals pursued by these organization have also changed.¹⁷ Wartime objectives have assumed a more personal quality. Goals emphasize the interests of the leaders rather than those of the state or organization itself.

In summary, frictions have developed between the assassination ban and national security goals in the United States because the conventions which regarded attempts to assassinate leaders to be beyond the scope of war fail to consider these new realities. In many instances, the world no longer conforms to the Clausewitzian trinity. Instead, the elements of the trinity are often inextricably merged, rendering the option of attacking one element, without attacking all of the elements, irrelevant.

¹⁶Ibid., 200-201.

¹⁷Ibid., 216.

B. ASSASSINATION AND WARFIGHTING

"Unless the societies in question are willing to adjust both thought and action to the rapidly changing new realities," writes van Creveld, "they are likely to reach the point where they will no longer be capable of employing organized violence at all. Once this situation comes about, their continued survival as cohesive political entities will also be put in doubt."¹⁸ If, as van Creveld suggests, it becomes impossible to conduct a war against an organization without waging war against the leader of the organization, then the assassination ban will become dysfunctional. This section explores the argument that assassination, legitimized as an instrument of national policy, may emerge as a warfighting alternative which is too valuable to surrender through a clear declaratory policy.

1. Warfighting at the National Level

Even as familiar forms of armed conflict are sinking into obscurity, violence continues unabated in the Third World.¹⁹ Because weapons proliferation has elevated these nations beyond the level of military insignificance, Third World conflict today threatens security beyond the Third World states. Economically, the exploding growth of the newly industrialized countries of the Third World

¹⁸Ibid., ix.

¹⁹Despite the vast differences among the states considered as belonging to the Third World, there are also fundamental similarities that justify, for the sake of parsimony, considering them together. These generalizations about the Third World are not intended to suggest that all Third World countries share these characteristics equally. Different states manifest different strengths and weaknesses.

make them important players in determining the shape and direction of the global economy.²⁰ Oil reserves of the Persian Gulf make that region increasingly vital to the international market. Furthermore, Third World cooperation has become imperative in resolving issues related to the environment, overpopulation, and narcotics trafficking.

Far from being marginal actors, the Third World occupies a central role in matters of international security. Yet the West has demonstrated a profound inability to understand the dynamics of warfare in the Third World. An unimpressive record of military failures includes episodes from the world's most important armed forces. The British lost India, Palestine, Kenya, Cyprus and Aden. The French spent six years fighting only to fail in Indochina and another seven before losing Algeria. The Belgians were forced to surrender the Congo, the Dutch lost Indonesia, and the Portuguese fought for years before they were forced to capitulate in Angola and Mozambique. For nine years America, the world's technological leader at the time, fought fruitlessly in Vietnam. The Soviet Union learned an equally painful lesson in Afghanistan.

A record like this should cause politicians, military leaders, and academia to reevaluate the fundamentals of war in our time. Yet, "by and large no such attempt at reevaluation was made," writes van Creveld. "Held captive by the accepted strategic framework, time and time again the losers explained away their

²⁰Steven R. David, "Explaining Third World Alignment," World Politics, June 1991, 254.

defeat by citing mitigating factors."²¹ This is no longer acceptable. The nature of the entities which wage war, the conventions by which war is surrounded, and the ends for which war is fought must be rethought and restructured.

The origins of these failures, claim some realists, spring from moralism in foreign policy. They argue that the idea of international morality is illusory. George Kennan writes, "there are no internationally accepted standards of morality to which the U.S. Government could appeal if it wished to act in the name of moral principles."²² Kennan also suggests that "the most serious fault of our past policy formulation lies in something that I might call the legalistic-moralistic approach to international problems . . . the belief that it should be possible to suppress the chaotic and dangerous aspirations of governments in the international field by the acceptance of some system of legal rules and restraints."²³ Hans Morgenthau contends that relations between states are "not controlled by universal moral principles concrete enough to guide political actions of individual nations." Thus the attempt to apply moral principles beyond the bounds of one's own state is itself a form of "immorality."²⁴ A realist would argue that forfeiting assassination as a warfighting option because of an ideal

²¹Van Creveld, 222.

²²George F. Kennan, "Morality and Foreign Policy," Foreign Affairs, Winter 1985-86, 207.

²³George F. Kennan, American Diplomacy, 1900-1950 (Chicago: University of Chicago Press, 1951), 65-66.

²⁴Hans J. Morgenthau, In Defense of the National Interest (New York: Knopf, 1951), 35-36.

associated with the mission of American democracy is fundamentally flawed. Indeed, it is misinformed hubris.

The cardinal problem of warfighting strategy for the realist is determining where the enemy is most vulnerable. The majority of Third world states are governed by some form of authoritarian rule. An organization under authoritarian rule will tend to be efficient and streamlined. However, an organization that has achieved efficiency by strict central control will probably be inflexible, and, therefore, vulnerable.²⁵

The necessity to capitalize on every vulnerability is more pronounced in this genre of conflict. When a powerful state engages a weak one in combat, the stronger force will tend to face certain political disadvantages. A weak power can commit the most heinous atrocities in the name of survival without significantly compromising its political support or its moral integrity. Conversely, a powerful state will be criticized for cruelty simply for engaging the weaker enemy effectively. Where no symmetry exists the stronger power faces a no win situation. His best alternative, therefore, is to achieve a quick victory. "For him," writes van Creveld, "the only road to salvation is to win quickly in order to escape the worst consequences of his cruelty: swift, ruthless brutality may well prove to be more merciful than prolonged restraint. A terrible end is better than endless terror and is certainly more effective."²⁶

²⁵Van Creveld, 121.

²⁶Ibid., 175.

But taking advantage of an authoritarian government's vulnerability to leadership targeting can be problematic. There is little agreement concerning the social, political and psychological impact of assassination on a target country. There is an insufficient data base to predict the insidious side effects which may accompany such an operation. It may be possible, however, to mitigate this uncertainty by considering a more general data base. With few exceptions, authoritarian regimes do not have formal mechanisms for regular turnover of their top leadership. Consequently, authoritarian rulers often die in office. This offers a data set from which to draw some general conclusions.

Richard Betts and Samuel Huntington studied the effects on the stability of states whose authoritarian rulers have died in office.²⁷ Their analysis includes all instances where long-duration leaders (ten years or more) of authoritarian states died in office from natural or accidental causes between World War II and 1984.²⁸

Although Betts and Huntington do not conclude that instability necessarily follows the death of an authoritarian leader, they do cite this as the most common result. Furthermore, they identify three factors which could help predict the types, extent and timing of instability. The first factor is pre-death instability. A high level of pre-death instability indicates that instability will continue unabated

²⁷See Richard K. Betts and Samuel P. Huntington, "Dead Dictators and Rioting Mobs," International Security, Winter 1986-86, 112-144.

²⁸This data includes four cases in which the leader was assassinated in office. The authors drew no specific conclusions about these cases, however.

or increase following the death. The second element is duration in power. Prolonged duration of the leader in power indicates political rigidity and is likely to lead to intense political demands after the death. The final factor cited in this study is the level of social organization. A high level of autonomous social organization facilitates the mobilization of people for post-death protests, rioting, and insurrection.

The death of an authoritarian leader, therefore, appears to be a vehicle for introducing instability into a country. Is this ever in the U.S. national interest? Perhaps. Betts and Huntington point out that in some cases instability led to new leadership with significantly different policies. In many of these instances, more moderate policies resulted. In three cases (Dominican Republic, Portugal, Spain), instability led to the replacement of authoritarian regimes by democratic ones. The authors found no cases where death of a long-term authoritarian leader produced results markedly unfavorable to U.S. interest.

The loss of a military leader may similarly provide a break in continuity which may introduce temporary instability into an army. This is a question which need not be restricted to the Third World. The Yamamoto assassination raises important questions about targeting military leaders.

Determining the degree to which the loss of a top army or naval commander will affect, or might have affected, the outcome of a battle or a war is speculative. Historians often engage in these types of "what ifs." Lee's plans, for example, never seemed to work as well after Stonewall Jackson was

accidentally killed by his own men after the Battle of Chancellorsville.²⁹ How important was this event to the outcome of the war?

Officers in battle, if they are identifiable, have always been especially vulnerable. Momentary lack of direction resulting from an officer killed in action may change the character of a battle or a fire fight. In the 1700s and 1800s, for example, sharpshooters routinely took aim at enemy officers on the opposite decks as ships closed in for final broadsides.³⁰ A carefully aimed shot took the life of Admiral Horatio Nelson at Trafalgar in 1805. Since ground officers are usually in proximity of the radio, antennas have more recently become good targets for grenadiers.

But the Yamamoto mission was different. The United States targeted Yamamoto not just because he was an enemy officer, but because he was Yamamoto. His death was not incidental to the mission, but its sole purpose. This sort of military leadership targeting does not enjoy the same long tradition. Indeed, opportunities not taken are more common. The Duke of Wellington at Waterloo specifically chose not to fire upon Napoleon when the opportunity arose. One historian writes:

Across the field stood Napoleon Bonaparte with his staff. An alert English artilleryman called out to the Duke: "There's Bonaparte, Sir; I think I can reach him; may I fire?" Reportedly the Duke was aghast. Wellington replied to the

²⁹Hall, 34.

³⁰Ibid., 35.

gunner: "No, no, Generals commanding armies have something else to do than shoot at one another."³¹

But the idea of "total war" had not yet developed at the time of Wellington's sporting decision. Perhaps it was William Tecumseh Sherman who heralded the death knell of Wellington's era when, in reply to General Hood's protests to the evacuation and burning of Atlanta, he announced:

You cannot qualify war in harsher terms than I will. War is cruelty and you cannot refine it.³²

The advent of total war changed the nature of war and the attitudes of the military and civilian war planners. Since the 1940s, any action which contributes to victory has been considered legitimate and moral. Witness Hiroshima and Nagasaki.³³

In conjunction with the development of the concept of total war, the increasingly centralized nature of war changed the view of targeting enemy commanders. These changes prompted British military theorist J.F.C. Fuller to suggest that the object of war was no longer to kill off a foe's privates one by one,

³¹Elizabeth Longford, Wellington: The Years of the Sword (New York: Harper and Row, 1969), 472.

³²William Tecumseh Sherman, Memoirs of William T. Sherman vol. 2 (New York: D. Appleton and Company, 1875), 119 and 126.

³³Hall, 36.

but to surprise the enemy generals at the breakfast table.³⁴ Headquarters and leaders are increasingly important targets in military operations.

Although the assassination ban has not affected the perceived legitimacy of targeting command and control centers, specifically targeting a military leader like Yamamoto has become controversial. It is unlikely that the Yamamoto case occurred to the drafters of the assassination ban. Indeed, it is possible that they were unaware of the Yamamoto example altogether. The communications intelligence that identified Yamamoto's flight in 1943 was not made public knowledge until 1978, two years after the adoption of the executive order.³⁵ The forfeiture of this capability was most likely incidental, inadvertent, and, perhaps, inadvisable.

2. Warfighting at the Sub-National Level

There is little historical data upon which to draw conclusions regarding the effectiveness of assassination as a weapon in a regional or global conflict. There is, however, significant evidence that suggests that selective targeting of individuals within the context of conflict at a sub-national level can be highly effective. This section considers the application of assassination in counterinsurgency and counter-terrorist efforts.

History suggests that anti-infrastructure operations are an indispensable part of counterinsurgency. The French, who fought in Indochina from 1946 to

³⁴Ibid., 39.

³⁵Ibid., 44.

1954, failed to recognize this and lost. Although the French supported a nominal pacification program, they relied primarily on conventional warfighting solutions. It was not until the loss of Vietnam was inevitable that the French acknowledged the importance of dismantling the enemy infrastructure. General Henri Navarre, commander of the French forces in Vietnam at the time of their defeat at Dien Bien Phu, wrote that "against an enemy who can succeed only with the support of the population the basic problem is to keep the latter on our side by watching over it, by reassuring it, and by protecting it."³⁶ Navarre's prescription included elimination the Viet Minh infrastructure.

During the Malayan Emergency (1948-1960), the British recognized from the outset that victory depended on destroying the enemy's infrastructure. In April 1950, Lieutenant General Sir Harold Briggs, Director of Operations in Malaya, set forth four objectives aimed at separating the guerrillas from the villages: secure all populated areas, break up the communist infrastructure in the populated areas, deny the communists food and support from the populated areas, and seek to destroy the enemy by forcing him to fight on terms of the government's choosing. By 1957, the guerrillas were clearly on the defensive. On 31 July 1960, the emergency was formally ended.

Clearly, the lesson of the French and British examples is that the enemy infrastructure is central to the success or failure of any insurgency. Nathan Leites

³⁶Henri Navarre quoted in Chester Cooper, The American Experience with Pacification in Vietnam (Arlington, VA: Institute for Defense Analysis, International and Social Studies Division, 1972), 100.

and Charles Wolf, Jr. advance a systemic model of rebellion which illustrates why this is so.³⁷ Figure 1 diagrams this model. An insurgency requires inputs of recruits, information, shelter, food, financing and materials. An insurgency acquires these inputs from either the local environment (endogeny), or from external sources (exogeny). Once acquired, the insurgent group converts the inputs into outputs through their logistics, intelligence, communications, and operations functions. The outputs of the insurgency include acts of sabotage, violence against individuals, public demonstrations, small-scale attacks, and eventually the use of conventional forces and tactics. The insurgency's outputs also include the exercise of administrative and governmental jurisdiction.

The ultimate focus of the systemic view is to identify methods of counterinsurgency. Two are readily apparent. First, a counterinsurgency effort can destroy the insurgency's outputs. This is the traditional counterforce role of military action. During the Vietnam War, the United States dedicated most of its attention and assets to this side of the equation. The second method of counterinsurgency which suggests itself in the model is to deny inputs to the enemy. The exogenous source of inputs for the Viet Cong was North Vietnamese support. The United States pursued exogenous input denial through air, ground and naval interdiction. The principle endogenous source of inputs was the

³⁷Nathan Leites and Charles Wolf, Jr., Rebellion and Authority: An Analytic Essay on Insurgent Conflicts (Santa Monica, CA: RAND Corporation, 1970), 32-45.

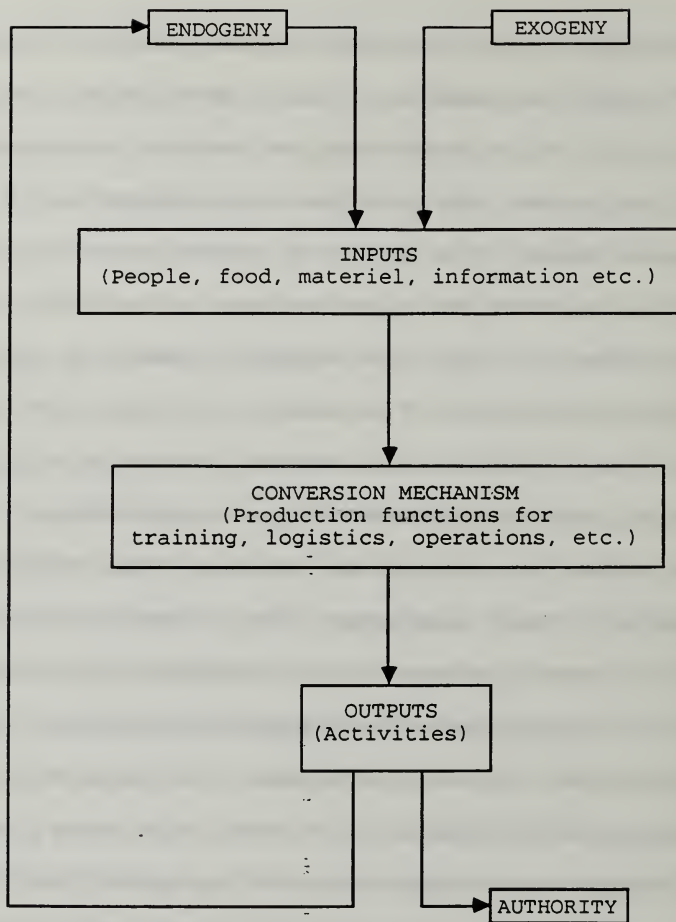


Figure 1. Insurgency as a System

Reprinted from Nathan Leites and Charles Wolf, Jr., Rebellion and Authority: An Analytic Essay on Insurgent Conflicts (Santa Monica, CA: RAND Corporation, 1970), 35.

population of South Vietnam. Endogenous input denial can be accomplished only by severing the connection between the insurgency and the population. The VCI was that connection.

The weakness of the United States counterinsurgency effort in Vietnam lay in its priorities. Countering guerrillas in the field maintained primacy over eliminating the VCI throughout the war. War planners were slow to understand the need to address the political problems in South Vietnam's countryside. Body counts were meaningless as long as the communists maintained their grip on the population. The infrastructure gave the enemy his staying power, his ability to regenerate his strength. As long as the enemy held the population in the countryside, he could replace guerrillas. If the United States had broken the link between the population and the insurgency, however, attrition of guerrillas would have become meaningful.

After eight years of fighting in Vietnam, the United States finally realized that the political infrastructure could not be ignored. Yet, ironically, after years of cataloging the many lessons of Vietnam, this is one mistake which the United States may be predisposed to repeat. The assassination ban, as currently written, is a major obstacle to an effective anti-infrastructure campaign. It may similarly prove to be an obstacle to countering another sub-national threat: terrorism.

When contemplating the employment of force against terrorism, governments must exercise caution. Inciting government overreaction is generally part of the terrorist's agenda. According to William Farrell:

Of the many purposes for which terrorists conduct their activity, there are two which either attempt to have a government overreact or, by not reacting, show inherent weakness. Those who decide to make use of soldiers in lieu of police must heavily weigh these factors. Are they doing what is needed, or what the terrorists want?³⁸

Striking out indiscriminately against terrorism, therefore, defies all rationale. Precision is imperative when combating terrorism. Fadlo Massabni, who was the American defense attache in Beirut in 1983, relates a story which may be instructive in this regard.³⁹ After a lunch at the apartment of a leading shiite cleric, Massabni and his host adjourned to the seventh floor balcony and looked out over the slums and refugee camps of south Beirut. The cleric commented, "If I were to take 100 men and tell them to jump from this balcony, all 100 would jump." Massabni asked, "Would you jump?" When the cleric failed to answer, Massabni suggested, "Too many people in Lebanon are willing to have other people make sacrifices." Massabni later conjectured that he had discovered the key to combating terrorism. "We should not be trying to kill the kids but the people who don't want to die."

Countering terrorism through assassination has been a long and successful tradition in Israel. In 1972, MOSSAD agents assassinated Cassan Kanafani, the reputed planner of the May 1972 Lod Airport Massacre, by planting a radio

³⁸William Farrell, The U.S. Government Response to Terrorism (Boulder: West View Press, 1982), 122.

³⁹Fadlo Massabni quoted in David C. Martin and John Walcott, Best Laid Plans: The Inside Story of America's War Against Terrorism (New York: Harper and Row, 1988), 365.

triggered bomb in his car. Also in 1972, Mahmoud Hamshani, the PLO and Al Fatah representative in Paris, was killed by a small explosive device planted in his telephone receiver by MOSSAD operatives. In 1979, a car packed with one hundred pounds of explosives was detonated in the proximity of Abu Hassan, the reputed mastermind of the 1972 Black September Munich Olympics Massacre.⁴⁰ A 1988 Israeli commando raid dispensed with Khalil al-Wazir, known worldwide by his nom de guerre Abu Jihad.⁴¹ Most recently, on 16 February 1992, U.S. manufactured Apache helicopters of the Israeli Air Force located, engaged and destroyed Sheik Abbas Musawi, head of the Iranian-supported terrorist group Hezbollah.⁴²

Assassination as a counter-terrorist measure can be more than a retaliatory tactic. Assassinating terrorist leaders is a proactive weapon which could disrupt terrorist groups and thereby preclude future operations. Terrorist organizations are characteristically reliant on a single, charismatic leader who cannot easily be replaced. They are structured in a centric pattern--the power is concentrated in a single center.⁴³ The death of that leader may precipitate disarray and a

⁴⁰Bruce Hoffman, Commando Raids: 1946-1983 (Santa Monica, CA: RAND Corporation, 1985), 36-37.

⁴¹Jill Smolowe, "Assignment: Murder," Time, 2 May 1988, 36-37.

⁴²Seth Cropsey, "Learning from the Death of a Sheik," Washington Times, 8 March 1992, B4.

⁴³Steven Sloan, Beating International Terrorism (Maxwell Air Force Base, AL: Air University Press, 1986), 31.

struggle for power within the group. Even if the transfer of power is smooth, the successor, although equally malicious, may not be equally adroit.⁴⁴

Furthermore, if the assassin is unidentified, some may suspect a plot from within. Distrust, mutual suspicion, and splintering within the group may ensue. Tightening of security will further complicate the already difficult communication system. All this will reduce the group's capabilities, at least temporarily, and may set fissures in the organizational structure which may eventually cause its collapse.⁴⁵

The development of doctrine on terrorism in general, and an offensive doctrine of counter-terrorism or terrorism preemption in particular, has been stifled by the continuing lack of agreement on whether terrorism is an act of war or a criminal act. This question fundamentally impacts the issue of legality and carries significant operational implications. This qualification has been a hinderance to the development of preemptive doctrine.

If terrorism is a crime, then due process must prevail. Rules of evidence and the rights of the accused will dictate counter-terrorist methods. Perpetrators must be apprehended and brought to trial. This presents a number of problems. First, gathering detailed evidence necessary to prevail in a courtroom is, for all intents and purposes, impossible in a non-permissive environment. Traditional intelligence collection efforts would invariably contaminate the evidence. The

⁴⁴Jenkins, "Assassination," 4.

⁴⁵Ibid.

second problem is that apprehending terrorists in an uncooperative or perhaps belligerent country is exceedingly difficult. These considerations become exponentially more difficult in cases of state sponsored terrorism. It is simply not realistic to think that the United States can routinely bring terrorists abroad to justice.⁴⁶ On the other hand, if terrorism is war, these concerns are mitigated. The "accused" becomes the "enemy," and a "smoking gun" will suffice for evidence. Preemptive measures became viable alternatives along with preventive and reactive measures.

But viewing terrorism as war also poses problems. "If we strike too broadly," writes Stansfield Turner, "We kill innocents, and are just like the terrorists; if we aim too narrowly, we appear to be targeting a person, and violate our policy against assassination."⁴⁷ Terrorist groups rarely offer targets of sufficient value for conventional military attack. A terrorist organization's only strategic asset is the terrorist himself.⁴⁸ Attrition, therefore, is a necessary alternative in a "war against terrorism." Attriting terrorists, however, will inevitably resemble assassination.

⁴⁶Brian Jenkins, Terrorism: Policy Issues for the Bush Administration (Santa Monica, CA: RAND Corporation, 1989), 7.

⁴⁷Stansfield Turner, Terrorism and Democracy (Boston: Houghton Mifflin Company, 1991), 219.

⁴⁸*Ibid.*, 9.

Brian Jenkins contends that if the United States responds to terrorism with assassination, it will be guilty of employing terrorist tactics.⁴⁹ This point is arguable. Terrorist actions are best characterized by their targets, not their tactics. Randomness is the defining feature of terrorist activity. Its method is indiscriminate murder of innocent people. Assassination, conversely, is completely discriminate and strikes directly at the source.

To summarize, this section has examined the warfighting advantages which political assassination may provide. At the national level, we see that many Third World nations, which have prematurely emerged from their military infancies through weapons proliferation, may be particularly vulnerable to leadership targeting. Also at the national level, it appears that military leadership targeting, exemplified in the Yamamoto case, may, at the very least, provide a temporary tactical advantage. At the sub-national level, counter-terrorist and counterinsurgency efforts may hinge on specific targeting of individuals. This discussion has suggested that assassination, as a tactic that goes directly to the source, perhaps precluding a greater evil while sparing the lives of those which are necessarily lost in a more conventional response, may be a just instrument of warfare indeed. The next section of this chapter focusses on deterrence, the final and most compelling argument against the assassination ban.

⁴⁹Jenkins, Assassination, 7.

C. DETERRENT ADVANTAGES SURRENDERED

The primary objective of U.S. military strategy is to deter attacks against American interests. The previous section discussed assassination in the context of failed deterrence, and suggested that its prohibition deprives the United States of a tactic which strikes at the primary vulnerabilities of authoritarian governments, insurgencies, and terrorist organizations. This section argues that deterrent advantages have also been lost. This argument proceeds by discussing the special problems of deterring Third World states and sub-national groups and then by suggesting that the threat of assassination, or ambiguity in this regard, may help serve these deterrent purposes.

1. What Deters?

Balance of power is the most widely used theory in international relations to describe national behavior. Balance of power theory argues that the behavior of states is driven by external threats. States align to protect themselves against the power of or threats from other states in a manner which prevents any other state or group of states from achieving preponderance. If the balance of power is unfavorable, a state will be deterred from aggression.

What deters a Third World state is not well understood. Balance of power theory has been particularly inadequate in providing an explanation.⁵⁰ The reason for this is that while Third World leaders do indeed make rational calculations to resist the threats they face, they must contend with a broader

⁵⁰David, 233.

spectrum of threats. Specifically, a Third World leader must consider not only threats from beyond his borders, but internal threats as well. Steven David designates this "omnibalancing."

Omnibalancing relies on the following assumption: the most powerful determinant of the behavior of Third World leaders is a rational calculation of how to ensure their political and physical survival.⁵¹ Instead of pursuing policy which will benefit the state, a Third World leader will make policy decisions based on how a policy will affect his probability of remaining in power. If this assumption is accepted, then it becomes fathomable why they will sometimes protect themselves at the expense of the interests of the state. This includes seemingly irrational aggressiveness vis-a-vis a superpower. Seth Cropsey writes, "What those men do grasp clearly is dissuasion: easily understood demonstrations of power that threaten them personally."⁵²

David offers three reasons why Third World leaders are most influenced by threats to their hold on power.⁵³ The first is the artificiality of the Third World state. The great majority of these states had been colonies out of which colonial powers created a state. The boundaries of these states were created arbitrarily to replace less formal demarcations. As a result, individuals within the state, including the leader of that state, have a limited sense of state identity or

⁵¹Ibid., 235.

⁵²Cropsey, B4.

⁵³David, 239-242.

national consciousness. Secondly, legitimacy is likely to be weaker for Third World leaders. Many Third World regimes come to power through force, and must, therefore, use force to remain in power. Because they lack legitimacy, they face continual threats to their rule. Finally, Third World leaders are especially aggressive about their hold on power because loss of power often means loss of life.

Because of the relationship between the Third World leader, the state he rules, and the rest of the world, it becomes evident that it is the leadership of the state, and not the state itself, that is the proper unit of analysis for understanding Third World foreign policy.⁵⁴ When a leadership is confronted with a choice of endangering its hold on power or endangering the state itself, it will inevitably choose the latter. It seems illogical, therefore, to expect a Third World state to yield to a deterrent which threatens the well being of the state without also clearly threatening the regime.

2. Can Assassination Deter?

There are numerous examples of organizations that have moderated their extremism to avoid a threat to their leadership. It has been alleged that the Israeli government adopted a no-prisoner policy against terrorists. Following the apparent implementation of this policy, terrorist activity on Israeli territory declined noticeably.⁵⁵ Similarly, Israel's harsh and swift raids against airplane

⁵⁴Ibid., 243.

⁵⁵Van Geel and Newman, 443.

hijackers virtually eliminated hijacking threats to El Al passengers for more than a decade.⁵⁶

Many advocates of assassination buttress their argument by pointing to Libya. Although the U.S. bombing attack on Tripoli was not officially (or, perhaps, unofficially) an assassination attempt, it is worthy of consideration. That attack represented a direct threat not only to the Libyan regime, but also to the life of Colonel Qaddafi. Although determining cause and effect is problematic in this case, there has been a significant diminution in Libyan-sponsored terrorist incidents.⁵⁷ The attack seems to have served its purpose by changing Qaddafi's perceptions of American intentions. It created uncertainty regarding American policy toward the assassination of foreign leaders.

The United States need not engage in assassination in order to deter. Rescinding the assassination ban, therefore, is not tantamount to inaugurating a reign of terror. Indeed, rescinding the assassination ban and conducting assassination is as far apart as nuclear deterrence and mass murder. Deterrence requires only a credible threat to introduce ambiguity—a threat which need never be uttered. A blanket declaration against assassination, however, makes the U.S. policy appear unambiguous. Worse yet, breach of that declaration makes U.S. policy appear capricious.

⁵⁶Ibid.

⁵⁷Samuel P. Huntington, "Coping with the Lippmann Gap," Foreign Affairs, America in the World 1987-88, 463.

D. CONCLUSIONS

Edward Hyams writes:

The first reaction [of most men] to the proposition that assassination may, in certain cases, be justifiable and useful is revulsion and rejection. This does more credit to his heart than to his head."⁵⁸

In brutal reality, political assassination could provide decision makers with a comparatively humane warfighting alternative. Assassination may save lives. "If blood is the measure," writes Brian Jenkins, "assassination is surely the cleanest form of warfare."⁵⁹ Thirty-seven people died when the U.S. bombed Libya. Could the assassination of one man have served the purpose of the raid? Indeed, might it not have been the best response? Perhaps directing military might directly at the responsible individuals enhances the legitimacy of the sender by demonstrating not only resolve, but also precision.

Furthermore, the national interest could be served even without spilling blood. If the declared prohibition were eliminated, then the threat of assassination, or ambiguity of American intent regarding assassination, could serve as a credible deterrent. Indeed, a threat against the leadership itself, direct or indirect, clear or ambiguous, may be the *only* way to deter some Third World states or sub-national groups.

⁵⁸Hyams, 2.

⁵⁹Jenkins, Assassination, 3.

Assassination can provide an active defense, serve as a credible deterrent, and spare the lives of noncombatants necessarily lost in a conventional response. Equally important, however, are ideas absent from this chapter. The responsibility of a democratic society to protect its people has frequently necessitated the use of deadly force. But the maintenance of American-democratic values is an equally dominant imperative. Despite objections from the realists, the American society and state does have a special character: a mission structured by a framework of value oriented goals.⁶⁰ That mission, to serve and promote the interests of justice and individual freedom, appears to be incompatible with the draconian practice of assassination. Chapter Five addresses this apparent dissonance.

⁶⁰Oseth, 178.

V. ASSASSINATION, REALPOLITIK AND THE DEMOCRATIC IDEAL

Two contradictory impulses, realism and idealism, have cast long opposing shadows on the field of American foreign policy. When it is dawn for the realists, it is dusk for the idealists. Pendular oscillations between the influences of national interest and power on the one hand, and ideals and normative values on the other--between Realpolitik and idealism, interest and moral principle, Washington and Wilson¹--have long governed the Janus-faced pattern of American involvement in the world. This dualism cuts to the essence of the deadly dilemma of assassination in American foreign policy.

Realists contend that states behave strictly by pursuing self-interest, without regard for morality or normative values. The realist model portrays an image of states as billiard balls. Governments judge, by experience and intuition, the requisite amount of force necessary to move one or another ball in a preferred direction.² Since all's fair, ends justify means and might makes right, realism

¹Samuel P. Huntington, The Dilemma of American Ideals and Institutions in Foreign Policy (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981), 3.

²Robert L. Rothstein, "On the Costs of Realism," Political Science Quarterly, September 1972, 441.

elegantly absolves statesmen from individual moral responsibility in the pursuit of the national interest.³

No period of American history has been without both of these influences acting concurrently, establishing the dialectical process which shapes all U.S. policy.⁴ Nevertheless, some periods are characterized by the domination of one force over the other. The Federalist years, for example, witnessed the preeminence of political realism. When realism returned in the 1930s as the dominate influence in American political thought, the movement was commonly designated as "neorealism." The writings of Nicholas Spykman, Reinhold Niebuhr, and E. H. Carr embodied neorealist thought prior to World War II.⁵ Under the patronage of such men as George Kennan, Hans Morgenthau and Walter Lippmann, among many others, neorealism emerged in full flower in the years immediately after the war and dominated throughout the 1950s and much of the 1960s.⁶ Today realism is once again enjoying something of a vogue. Idealism, too, has enjoyed periods when its influences were more strongly reflected in American politics. The Calvinist conception of America as the

³Linda B. Miller, "Morality in Foreign Policy: A Failed Consensus?" Daedalus, Summer 1980, 143.

⁴For an excellent discussion of this process, see Robert Osgood, Ideals and Self-Interest in America's Foreign Relations (Chicago: University of Chicago Press, 1953).

⁵See Osgood.

⁶See Robert O. Keohane, ed., Neorealism and its Critics (New York: Columbia University Press, 1986).

redeemer nation was most clearly articulated in the eighteenth century in Jonathan Edwards' Freedom of the Will.⁷ John Calhoun's writings exemplified the Calvinist tradition in the nineteenth century.⁸ Idealism also characterized the first four decades of the twentieth century, becoming an apotheosis in Woodrow Wilson's vision of America as "the only idealistic nation in the world," endowed with "the infinite privilege of fulfilling her destiny and saving the world."⁹ In the 1970s, the experiences of Vietnam and Watergate, politically manifest in the election of Jimmy Carter, inaugurated a "new moralism" to challenge the neorealism of the 1950s and 1960s.¹⁰

The idealist element which distinguishes U.S. foreign policy has evoked admiration from some of the world's governments, contempt from others, and more than occasional bewilderment from all. But the force of America's philosophic purpose in foreign affairs is undeniable. Realists must concede the importance that idealism has played in shaping the course of American development. "The unifying principle" of history for nineteenth-century historian George Bancroft, as Samuel Huntington points out, "was progress ordained and

⁷See Vernon Louis Parrington, Main Currents in American Thought, Vol. I (New York: Harcourt Brace Jovanovich, 1954).

⁸See Richard Hofstadter, The American Political Tradition and the Men Who Made It (New York: Vintage Books, 1948).

⁹Woodrow Wilson quoted in Arthur Schlesinger, Jr., "Foreign Policy and the American Character," Foreign Affairs, Fall 1983, 4.

¹⁰See Theodore Harold White, America in Search of Itself: The Making of the President (New York: Harper and Row, 1982).

planned by God--the advance of liberty, justice, and humanity, all of which were peculiarly exemplified in American history, where providential guidance had brought together a singularly fit people and fit institutions."¹¹

If Bancroft is correct that the pursuit of these ideals have united America, then is loss of unity not the logical result when these ideals are frustrated by the near term pragmatism of the realists? Realist arguments are too often coopted to provide an esoteric platform for pursuing rather common foreign policy.¹² At some point the denigration of moral principle in the conduct of foreign affairs "will rob U.S. and Western policies of purpose, direction and ultimate strength."¹³ The inextricable association between democratic ideals and American foreign policy, which this paper has to this point neglected, is critical to our discussion of political assassination.

As its numerous disclaimers indicate, Chapter Four presented only the realist argument. This chapter advances the idealist's claim that a nation cannot embrace liberal democratic tradition while pursuing foreign policy through the sights of a sniper rifle. But the case against political assassination is not strictly

¹¹George Bancroft quoted in Huntington, 1.

¹²Hegel, for example argues that moral criticism of state affairs is impossible since the state determines the standard of things. This articulation of "might is right" in the pursuit of national interest was license for Prussian imperialism. See Karl Popper, The Open Society and its Enemies Vol. 2, (Princeton: Princeton University Press, 1962).

¹³Eugen Loeb, "Moral Values and U.S. Policy: An End to the Age of Hypocrisy?" Strategic Review, Spring 1986, 28.

moralistic. The pragmatic argument opposing assassination is also compelling. This chapter attacks assassination from both positions.

A. PRACTICAL UNCERTAINTIES

U.S. efforts to dispose of Castro in the early 1960s are indicative of one variable which is often overlooked in a discussion of political assassination: its operational difficulty. In the months before Desert Storm, as war with Iraq seemed inevitable, many nervous Americans wondered, "why don't we just kill Saddam?" The word "just" indicates the naivete of this petition. Assassination, contrary to its reputation as the simple solution, is an enormously complex undertaking. This section discusses the operational, institutional, and philosophical concerns which profoundly complicate an effort to specifically target an individual.

1. Operational Challenges

Modern warfare (since Napoleon) has exhibited the tendency for assassination to be rare while hostilities are in progress.¹⁴ This may appear counterintuitive since war enhances the justification for assassination. The destruction of an enemy commander or high civilian official in times of war may be seen as an act of patriotism committed in the defense of one's home and fellow citizens. But this phenomenon is not as paradoxical as it may seem. The outbreak of war is necessarily accompanied by the tightening of security

¹⁴Ford, 246.

measures, particularly those designed to protect the lives of government and military leaders. As tensions escalate, even before the outbreak of violence, the opportunity for successfully defeating the security measures designed to protect leadership diminishes. The men who bring their nations to war, ironically, are safest from the prospect of being killed in war.¹⁵

Assassination has also been generally rare during extremes of repression and perceived social injustice.¹⁶ Great tyrants, like leaders during times of war, are protected by the very repression which make them deserving targets. Indeed, it is more often the successor regime, after relaxing the measures of repression, that pays for the sins of their predecessors.¹⁷

In order to circumvent the security which normally surrounds military and civilian leadership, and which is customarily fortified during times of heightened tension or armed violence, assassins would require enormously detailed intelligence. These requirements would necessitate meticulous collection. Before Israeli commandos assassinated Khalil al-Wazir, MOSSAD, Israel's intelligence agency, observed his comings and goings from his home in Tunisia for five years.¹⁸ Assassination, therefore, can be a vehicle for swift reaction or reprisal only if intelligence collection on the target has been an ongoing effort. This

¹⁵Hyams, 27.

¹⁶Ford, 382.

¹⁷Ibid.

¹⁸Smolowe, 36.

would require a degree of foresight and premeditation which is uncharacteristic of American foreign policy in general.¹⁹ Assassination, it would seem, is better suited as an instrument in a long term conflagration, also uncharacteristic of recent trends in American warfighting style.

Beyond the operational complexities lies an institutional obstacle to achieving a reliable assassination capability: identifying agents to "pull the trigger." Should America draw its assassins from its own military and intelligence resources, or should it employ surrogates from the targeted country? Either solution raises troublesome practical and philosophical concerns.

Certain of America's Special Operations Forces could achieve a reliable assassination capability with minimal specialized training and equipment. But American soldiers are not assassins. As John Rawls argues, "even in a just war certain forms of violence are strictly inadmissible; and where a country's right to war is questionable and uncertain, the constraints on the means it can use are all the more severe."²⁰ Contrary to conventional beliefs, value systems and ethics are not peripheral to warfare, but constitute its basis and driving force. Ethics, enshrined and codified in war convention are intended to protect not only the

¹⁹Furthermore, U.S. intelligence is poorly designed for this type of real-time intelligence gathering which depends highly on agents in the field, or human intelligence. Traditional emphasis on technological means has atrophied this capability. In his confirmation hearings, Robert Gates spoke of the need to enhance human intelligence. See Cropsey, B4.

²⁰John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971), 379.

belligerent nations but the soldiers themselves. Therefore, since man's first excursions into mortal combat with his fellow man, he has sought to regulate it and subject it to limitations.²¹ Without clearly circumscribed conventions dictating who can and cannot be killed, and by what means, an army is little more than a mob, a soldier little more than a murderer.

The line separating killing in war from murder is arbitrary, but it is absolutely essential. Van Creveld points out that war without this demarcation is not only a monstrosity, but an impossibility. "Where this distinction is not preserved society will fall to pieces, and war--as distinct from mere indiscriminate violence--becomes impossible."²² When a soldier enlists, he accepts the risk that, in time of war, he may be killed by a belligerent counterpart. Furthermore, his killer may do so with impunity. It is widely agreed that this is morally legitimate homicide. When a civilian official takes office, however, he assumes no such risk.²³ There is no political code that makes him a legitimate military target.

²¹Some disagree that war should be or could be regulated. In *Vom Crieg*, Clausewitz presents war as subject to no rules except those of the political purpose for which it is made. "In dangerous things such as war, errors made out of kindness are the worst." Herbert Spencer, Friedrich Hackel, and other "social darwinists" proclaim that war is simply a mechanism for natural selection. Humanity, therefore, is irrelevant in battle. Expediency should be the only consideration. For a detailed presentation of these viewpoints, see Van Creveld, 63-66.

²²Van Creveld, 90.

²³Some argue that if a political leader wears a uniform or holds military rank he becomes a legitimate target. This argument lacks substance. Equitable international relations require that the leader of any sovereign state must be treated as such. U.S. presidents do not wear uniforms, yet they function as the commander-in-chief of the armed forces. The difference between U.S. presidents

Killing a political official, therefore, is ethically tantamount to intentionally killing an ordinary citizen--murder. When soldiers become assassins, therefore, they must hurtle "moral fortifications" established by military tradition "that can be stormed only at great moral cost."²⁴ The ethical justifications which make soldiers possible will begin to decay.

Despite its moralistic overtones, this is a pragmatic argument. Abrogation of war conventions, beyond the injurious effects it will have on the soldier, may weaken the offending nation's ability to wage war. Sun Tzu understood this. He listed "the favor of heaven" as the first condition for success in war.²⁵ Subordinating the normative conception of "good" to the obscure notion of national interest would have seemed ludicrous to Sun Tzu.²⁶ Although "the favor of heaven" is difficult to quantify, the experiences of the United States in Vietnam and the former Soviet Union in Afghanistan vindicate this claim. Disregarding moral beliefs objectifies the troops in the field. "Soon such an army will cease to fight, each man seeking only to save his conscience and his skin."²⁷

and their uniformed counterparts, therefore, is one of appearance and not kind. Until a uniformed leader physically joins the battle, he is no more a legitimate target than any other political leader.

²⁴Michael Walzer, Just and Unjust Wars (New York: Basic Books, Inc., Publishers, 1977), 130.

²⁵Van Creveld, 127.

²⁶The perspective of the national interest as the *raison d'être* for state policy is both Eurocentric and modern.

²⁷Van Creveld, 93.

The willingness of a soldier to risk his life is limited unless he perceives both ends and means as just.

Further complicating the question is the legal status of the soldier himself. Just as a soldier serving as an assassin may feel himself to be something other than a soldier, the enemy will certainly consider him otherwise. As Walzer points out, if apprehended, an assassin cannot claim the same protection as a soldier under of the rules governing prisoners of war. "Political killing imposes risks quite unlike those of combat, risks whose character is best revealed by the fact that there is no such thing as benevolent quarantine for the duration of the political struggle."²⁸ Placing an American serviceman in this dubious status is morally contentious in any circumstance other than a struggle for national survival.

Returning to an issue of operational pragmatism reveals the final argument against U.S. servicemen as assassins. Assassination is more likely to succeed if it is an "inside job." Ideally, an assassin would be capable of moving freely within the enemy's cities. Furthermore he should be well connected with individuals who can knowingly or unknowingly help him get close to his targets. The CIA recognized this when they sought surrogates within Cuba to assassinate Castro.

But surrogates also present unique problems. Soldiers can be emotionally detached from their targets. An indigenous assassin will not share this

²⁸Walzer, 201.

detachment. He may have a political agenda and an attitude about violence quite different from the American version.²⁹ Former Director of Central Intelligence Richard Helms suggests that:

If [assassination] is done by surrogates whom you've trained in the black arts and given a suitable cover, there is a whole other set of problems. If you've recruited them from dissidents who have an ideological motivation, they may be very hard to control. You may think you've called the operation off and wake up one morning and find that they've gone and done it anyway.³⁰

The arguments presented thus far indicate the complexities of waging war against a specific individual. But if these operational complexities can be overcome, if an assassination is successful, what will have been accomplished? The most difficult questions start here.

2. An Exaggerated Linkage?

Advocates of assassination make the monumental assumption that ridding the world of one man would make the world, or at least the United States, a happier place. Chapter Four presented a theoretical argument supporting this assumption. But historical analysis calls these theories into question. This section argues that the linkage between one man, even a national leader, and the disagreeable policies which his nation may embrace, is too often exaggerated. In

²⁹Jenkins, "Assassination," 10.

³⁰Cited in George J. Church, "The Problems with Retaliation," Time, 8 July 1985, 20.

order to support this argument, this section hypothetically considers an alternative outcome to the failed assassination attempts against Adolf Hitler.

Reaching a consensus on an historical figure whose premature demise would have favorably influenced history would not be difficult. A target with "clearer credentials for extinction"³¹ than Hitler would be hard to find. But precisely because the case for assassination appears incontrovertible in this instance, it demonstrates that no case is.

Closer scrutiny reveals complexities which are often distorted when viewed through the lens of hindsight. When we recover our historical perspective, we immediately find that the question "when" is problematic.³² An observer prior to 1939, when Hitler's death may have been preemptory, would find it difficult to comprehend the Hitler which historical investigation has since uncovered. Certainly the observer would agree that he was a ruthless megalomaniac, a racist, and an expansionist. But these characteristics are not sufficient to identify a leader for assassination. As Brian Jenkins points out, "Megalomania, racism, and a proclivity to invade one's neighbor, regrettably, are not rare attributes among

³¹Ford, 280.

³²The question "how" is equally troublesome. Hitler confessed that he was always vulnerable to an attack from a "dedicated gunman." Yet he survived numerous attempts. This not only points to the operational frictions involved in an assassination, but also Adolf Hitler's abundant "good luck." Ever since World War I, it seemed that "mystical providence" had concluded that the only bullet that could claim Hitler's life would be his own.

world leaders."³³ Answering "yes" to "wouldn't you have killed Hitler?" presumes perfect knowledge.

For the sake of argument, let us assume that one of the many attempts to assassinate Hitler had succeeded. Measuring what might have occurred against what did occur can prove nothing. It is useful here, however, because it discredits the certainty of the conclusion that Hitler's assassination would have been an unqualified blessing. A contrary conclusion is equally compelling.

The popular projection predicts that Hitler's death would have ended the Second World War, saved millions who would otherwise die in battle and prevented the slaughter of European Jews. But this happy outcome assumes a great deal.³⁴ First, it assumes that the conspiracy would have spontaneously incited, presumably through the cooperation of the military, the overthrow of the Nazi hierarchy, the defeat of the SS and the Gestapo, and the establishment of a constitutional regime. Furthermore, it assumes that the Allies, despite their previous demands for Germany's unconditional surrender and Stalin's expansionist ambitions, could have concluded cease-fire agreements on both fronts agreeable to still-formidable Germany. This scenario also disregards the complications of withdrawing unbeaten Wehrmacht divisions from Scandinavia, the Balkans and France. Capitulation under these circumstances would conjure memories of the "unnecessary surrender" of 1918.

³³Jenkins, "Assassination," 3.

³⁴For a detailed presentation of these assumptions see Ford, 285.

Rather than disintegrating, the Nazi Party could have exploited Hitler's assassination to strengthen German resolve.³⁵ Hitler's own rise to power benefitted from the image of Germany's defeat in World War I as a betrayal, a "stab in the back." In all probability, the inheritors of the beheaded regime would have used this image once again. Furthermore, if Germany had not seized the opportunity of Hitler's demise to escape the war, the Wehrmacht would have achieved a dreadful advantage. Hitler's strategic ineptitude had repeatedly frustrated his military leaders. With the Fuhrer out of the way, the Wehrmacht would have been free to pursue the war differently. Had Hitler been eliminated prior to Barbarossa, for example, a very different outcome to the Second World War is conceivable.³⁶

The Hitler case suggests that advocates of assassination place an extraordinarily high value on a single individual. This viewpoint is not without intellectual foundations. The Carlyle approach to history focuses on great men.³⁷ Writing in the nineteenth century, Thomas Carlyle argued that certain individuals, because they possessed specific qualities, have been irreplaceable forces in history.

But Carlyle's concept of the historical hero is misinterpreted by those who advocate assassination. It is an historical approach not a prescription for policy.

³⁵Ibid., 285-286.

³⁶For a detailed presentation of this argument, see R.H.S. Stolfi, Hitler's Panzers East: World War II Reinterpreted, (Norman and London: University of Oklahoma Press, 1992).

³⁷See Thomas Carlyle, On Heroes, Hero Worship and the Heroic in History (New York: E. P. Dutton, 1934).

Carlyle's approach is a method of understanding history, not preempting it. Like all analytical tools, it facilitates understanding by simplifying reality. Thus, the linkage between the raid and the curtailment of Libyan sponsored terrorism may be an oversimplification.³⁸ Likewise, Saddam Hussein's demise would not have guaranteed peace in Iraq. "Iraqis are responsible for this horrific regime," says Iraqi exile Samir al-Khalil, author of Republic of Fear.³⁹ "It is a product of trends in political culture in this part of the world." Qaddafi, Hussein and others who U.S. popular opinion would have exterminated, are symptoms of deeper ills within their perspective nations. The logic of assassination equates a political leader to a chess player manipulating his unreactive and uninvolved pieces. It is an oversimplification of reality and a dreadful exaggeration. Taken to its ultimate expression, this distortion of reality is pernicious indeed.

3. Costs Unseen and Unseeable

The arguments presented above contain the essence of the final practical argument against political assassination: its unpredictable nature. No body of military experts, area specialists, political scientists or fortune tellers could ever gather enough information to conclude that an assassination would serve their

³⁸The conclusion that Qaddafi's brush with death in the 1986 bombing raid significantly curtailed Libyan sponsored terrorism discounts other, less visible pressures, particularly economic pressures, which were brought to bear concurrently with the military response. Furthermore, the conclusion that Qaddafi has demurred since the attack may itself be flawed. Pan Am 103 challenges this assumption.

³⁹Budiansky, 26.

purposes. Although no foreign policy decision is without uncertainty, the decision to assassinate a military or political leader is virtually unmanageable.

Chalmers Johnson's model of revolution describes an "X-factor" as a key ingredient for the outbreak of revolution.⁴⁰ His X-factor is a chance occurrence which impacts a set of social conditions in a unique, unanticipated and imponderable manner. No amount of analysis can predict the arrival or the consequences of an X-factor. Such a variable can only warn us that human endeavors are fraught with unforeseen catalysts which propel history.

Johnson's concept of an X-factor, taken beyond its original context, is also helpful for our discussion. The assassination of an important political or military leader will project the targeted organization, nation, or set of policies in some direction away from the status quo. But history tells us that predicting that direction is problematic. Using Johnson's terminology, assassination is not a decisive strategy with readily articulated goals, but an artificially manufactured X-factor--a marginally informed roll of the dice.

The assassination of Julius Caesar illustrates the unpredictable character of political assassination. Caesar's death ensured, as nothing else could have, the complete realization of Caesar's ambition to replace the Roman aristocratic republic by a democratic monarchy. His assassins made quite inevitable that which they assassinated him to preclude. "It is one of history's greatest jokes,"

⁴⁰See Chalmers Johnson, Revolution and the Social System (Stanford, CA: Hoover Institution on War, Revolution and Peace, 1964).

writes Edward Hyams, "that the assassination of Julius Caesar accomplished precisely what his assassins, justified in their deed by the interests of their party, were seeking by killing him to avoid: their own final destruction and the establishment of the new monarchy."⁴¹ This was an incalculable consequence. Caesar's assassination was the X-factor accelerating the destruction of the old oligarchy.

The Caesar case also illustrates, once again, the extraordinary intelligence requirements necessary to predict the outcome of an assassination. Even perfect target data is insufficient. Intelligence collection must also concern itself with systemic questions. Is the regime cohesive and likely to act decisively and in unison if attacked? Or is it divided by conflicting claims ambitions and loyalties? Who commands the armed forces and where do his loyalties lie? What control does the regime have over the modes of communication? How effective is its propaganda? It is impossible to present more than probabilities on many of these matters. More elusive still is the difficult question of historical implication and the virtually unmanageable question of psychological impact.

The most fundamental questions concern the political heir of the victim. Yet even these are onerous. Every political and military system, national and sub-national, has a mechanism for the replacement of its leaders as they die, retire, resign or disappear. The history of most organizations does not end with the death of their leaders. An assassination, therefore, is logical only if the

⁴¹Hyams, 67.

assassinating party can predict a new leader who is more benign or less effective than his predecessor.

But the character of a successor is particularly difficult to estimate in authoritarian states or secretive organizations where the voices and opinions of the lieutenants are muted. In 1973, Israeli agents killed Mohammed Boudia, an Algerian who had orchestrated Palestinian terrorist operations in Western Europe. His replacement, "Carlos", represented a significant step in the wrong direction. Among the possible successors for Yasir Arafat is the man who planned the bloody attack on Israeli athletes at the Munich Olympics in 1972. If U.S. bombs had fallen differently, Qaddafi may well have been replaced by one of his lieutenants running Libya's terrorist apparatus.⁴² The uncertainty of succession points once again to the unpredictability inherent in assassination. If a more effective or ruthless replacement assumes the mantle on a mandate of revenge, then assassination is counter-productive.

A final uncertainty compels introspection. Can the United States protect its own leadership? If a team of dedicated assassins could have been trained by the British, Russians or Americans to kill Hitler, then certainly the Germans could have trained assassins to kill Churchill, Stalin or Roosevelt. Indeed, the United States may find itself with a comparative disadvantage in this regard. Jenkins writes, "In a war of assassination, clearly we would be at a disadvantage."⁴³

⁴²Jenkins, "Assassination," 8.

⁴³Ibid.

Assassination of major political figures is a relatively rare phenomenon in authoritarian regimes where security measures are rigorous. In democratic societies, security measures cannot be as rigidly enforced. Indeed, the efficacy of a democracy depends on contact between politicians and their constituents.⁴⁴ According to Carl Sandburg, Lincoln once said that the only effective way to avoid all risk was to "shut himself up in an iron box," where he could not possibly perform the duties of president. Lincoln went on to say, "in a country like this, where our habits are simple, and must be, assassination is always possible, and will come if they are determined upon it."⁴⁵

In war, belligerents must fight in a manner consistent with the ultimate goal of securing the peace. Walzer, quoting Sidgwick, argues that war must be fought so as to avoid "the danger of provoking reprisals and of causing bitterness that will long outlast" the fighting.⁴⁶ Military conduct thought to be unnecessarily brutal or widely regarded as illegitimate may ultimately result in festering resentment, engender a sense of scores unsettled, and invite retaliation in kind. Those who advocate assassination as an instrument of foreign policy must consider whether America is prepared for the repercussions of its actions.

⁴⁴Murray Clark Havens, Carl Leiden, and Karl M. Schmitt, The Politics of Assassination (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1970), 11.

⁴⁵Carl Sandburg, Abraham Lincoln: The War Years (New York: Harcourt, Brace and World, Inc., 1939), 210.

⁴⁶Walzer, 132.

In summary, this section presented practical arguments against assassination. It suggested that the operational difficulties associated with assassination are often overlooked. Furthermore, identifying assassins and then controlling them during an operation presents institutional as well as philosophical complexities. If these complexities can be overcome, we see that it is difficult to establish definitively the link between an assassination and national goals. Indeed, since measuring the desirability of a successor is problematic, assassination could be counterproductive. Finally if the United States engages in this kind of activity, it may be particularly vulnerable to retaliation in kind.

These arguments are compelling in terms compatible with the outlooks of idealists as well as realists. The next section presents a purely idealist perspective. For realists, this argument may be heresy.

B. THE PRICE OF REALPOLITIK

President Bush's coinage, "the new world order," is widely misunderstood. Those who see this provocative image as a plan of action, or as a national goal fail to acknowledge the revolutionary character of the day. Indeed, these misinterpretations define one who is confined to a bygone conceptual framework.

The notion of a new world order reflects a fundamental understanding that the world has changed. Neither a promise of utopia nor a preface to a modern American crusade, it represents only the recognition that a profound restructuring has occurred, the ultimate resolution of which remains uncertain.

A structural change of this magnitude calls for a perceptual change that is equally profound. The conceptual framework which has traditionally guided international relations is fading into irrelevance. The new world order necessitates a paradigm shift, a new way of understanding global realities. Failure to recognize this ignores the magnitude of the modern dynamic and forfeits the opportunity of contributing to the direction of the changes. Business as usual is irresponsible.

A reevaluation of the elements that define national power should accompany this paradigm shift. This section argues that a fundamental reorientation in the typology of power has occurred. In the context of this reorientation, assassination, perceived as a policy which is contradictory to democratic norms, will be deleterious to America's power position.

1. Ideology and National Power

One of the principle determinants of the modern era has been the seventeenth century concept of the nation state. The fundamental characteristic of the nation state is its sovereignty. It possesses absolute power to determine its interests and absolute moral sanction to achieve them.

If humankind has profited from the nation state, it has done so at a cost. In the twentieth century, the nation state has been associated with wars of unprecedented destruction, arms races, resource depletion and environmental damage. Confined by concepts too narrow for the problems of global

interdependence, the nation state is no longer an effective unit of governance.⁴⁷ "There are many threats to humankind and the planet itself," writes Frank Teti, "that require a wider perspective than that of national interest."⁴⁸ The efficacy of the nation state is facing a credibility problem.

The character of power associated with the nation state is primarily military and economic. But as we look toward a fundamental paradigm shift, we are certain only of this: that traditional wisdom is not the answer. "We are being forced to redesign our spectrum of possibilities."⁴⁹ It is very likely that military and economic might will continue to be important sources of global influence. But some argue that ideological power will gain prominence, and perhaps preeminence, in the new global system. When adherence to an ideology mobilizes and defines the nation, the force of values determines national power. This could be a dangerous situation indeed if religious fundamentalism, political-economic absolutism, or mystical racism dominates the ideological milieu. This could also be an infinitely desirable situation if post-modern ideology is, instead, informed by the values of the open society: pluralism, tolerance and compromise.

The United States should be eminently prepared for such a reorientation. These values gave the Republic its identity. The hallmark of the American value system is its ability to accommodate diverse cultures while preserving political

⁴⁷Fritjof Capra, The Turning Point (New York: Bantam Books, 1983), 398.

⁴⁸Frank Teti, "Play it Again Sam: Strategic Thinking in American Thought," TMs, 148.

⁴⁹Ibid., 149.

order.⁵⁰ Ethnic diversity and traditions of consensus building and compromise enhance America's credibility in the world and identify it as a natural leader in a paradigm characterized by a global perspective.

Pursuing the logic of an ideological power base, it is evident that the United States can maintain its relative power position only if it remains committed to these principles. Assassination challenges democratic norms at two points. First, it objectifies the individual. This is a natural tendency, indeed an imperative, in war.⁵¹ But an assassination, even in the context of war, denies the victim the right to life which only soldiers surrender. Secondly, it calls to question America's traditional appeal to the rule of law. The ideas of due process and the rights of the accused are obscured when a nation determines guilt in absentia and proceeds with the execution. Regarding values as extraneous, as champions of political assassination do, threatens to decay vital elements of America's power base. It threatens America's moral legitimacy.

2. The Force of Example

Some Americans, frustrated by a world of pirates, chieftains and Third World crusaders, look with envy toward Israel. Israel operates in an environment comparatively free from the moral restrictions which the United States has

⁵⁰Recent trends in racial discord within the United States challenge this statement. Seen in this context, racism is more than a domestic scourge. It threatens America's power position in the world.

⁵¹For an interesting discussion on objectification in war see John W. Dower, War Without Mercy (New York: Pantheon Books, 1986).

voluntarily shouldered. Military response, therefore, need not be considered through the cryptic lens of perceived world opinion. Old Testament justice is sanction enough.

This envy is indicative of a narrow perspective indeed. The geopolitical pressures facing Israel and the United States are profoundly different. Israel is a small, insecure country surrounded by neighbors whom would welcome its extinction. Self preservation is necessarily Israel's pervasive consideration. Its sense of immediate and grave danger, although attenuated in recent years, remains powerful enough to produce general consensus on its methods. Nevertheless, Israel has earned, however unfairly, a reputation as a pariah state.⁵² This is not an enviable circumstance.

The United States, by contrast, is a huge country with non-threatening neighbors. Its dominant imperative must transcend simple survival. "There is much else that we might plausibly want to preserve," writes Walzer. "The quality of our lives, for example, our civilization and morality, our collective abhorrence of murder, even when it seems, as it always does, to serve some purpose."⁵³ Calculating utility based exclusively on comparative body count estimates disregards American history which still embraces as heroes those who killed and died for democratic ideals.

⁵²Gregory F. Treverton, "The Ethics of Covert Intervention," International Journal, Spring 1988, 309.

⁵³Walzer, 262.

The point is sometimes made that "there is a direct relation between the health of liberty in the United States and the health of liberty in other societies. Disease in one is likely to infect the other."⁵⁴ The United States cannot effectively promote democracy in other countries unless its own house is in order. Thus Stanley Hoffmann argues, "like charity, well-ordered crusades begin at home."⁵⁵ The degree to which assassination violates democratic principle is arguable. But legalistic debating notwithstanding, the anti-democratic perception which assassination promotes is undeniable. Low cost victories accomplished through an assassin's cross hairs, therefore, will seem ambiguous, transitory and not nearly such a bargain when compared with the costs to America's image in the world.

Realists would reject these concerns on two grounds. First they would contend that the health of liberty in other societies is inconsequential. Here the realists are guilty of myopic thinking. Advancing the democratic cause is not simply a good deed, it is a foreign policy position that promotes America's self-interest. A more democratic world is likely to be a more peaceful world.⁵⁶ The history of war between democracies in the modern world is virtually the null

⁵⁴Huntington presents this argument but does not completely subscribe to it. See Huntington, 12.

⁵⁵Stanley Hoffmann, "No Choice, No Illusions," Foreign Policy, Winter 1976-77, 127.

⁵⁶Joshua Muravchik, Exporting Democracy (Washington, D.C.: The AEI Press, 1991), 8.

set.⁵⁷ Immanuel Kant's philosophies contain an explanation for the relative peacefulness between democracies.

[When]the consent of the citizens is required to decide whether or not war should be declared, it is very natural that they will have a great hesitation in embarking on so dangerous an enterprise. For this would mean calling down on themselves all the miseries of war . . . But under a constitution . . . which is . . . not republican, it is the simplest thing in the world to go to war. For the head of state is not a fellow citizen, but the owner of the state, and war will not force him to make the slightest sacrifice.⁵⁸

Democracy is a system which promotes essentially ethical decision-making.

The second realist objection is that idealists exaggerate the impact of the U.S. example. There is empirical evidence which discredits this objection. The students who marched for democracy in Beijing took as their symbol a replica of the Statue of Liberty. When protestors in Czechoslovakia called a general strike in the fall of 1989, the New York Times reported that soon after the strike began, a brewery worker rose on a platform to proclaim: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness."⁵⁹ On the occasion of the overthrow of Rumanian dictator Nicolae

⁵⁷See R.J. Rummel, "The Freedom Factor," Reason, July 1983, 32-38. See also Muravchik, 8. Muravchik presents Paul Gottfried and Patrick Buchanan's contrary example of England who declared war on democratic Finland in World War II.

⁵⁸Immanuel Kant, Kant's Political Writings, ed. Hans Reiss, (Cambridge: Cambridge University Press, 1970), 100.

⁵⁹Esther B. Fein, "Unshackled Czech Workers Declare Their Independence," New York Times, 28 November, 1989, A1.

Ceausescu, a writer and film maker active in the rebellion told the Washington Post, "[We] live at the moment of 1776."⁶⁰ History suggests that America's actions are not only judged, but emulated.

Finally, what of America's self-image? Brian Jenkins poses a hypothetical scenario.

Just imagine the President appearing on television one evening to announce, "Some time ago I authorized the assassination of Muamar Qaddafi. I am pleased to report to you tonight that American agents have successfully carried out this mission."⁶¹

The reaction of the American public to such an announcement would be dramatically divided.

Sometimes a single image is in itself a watershed event. The process is as irrational as the consequences are profound. Witness the image of the head of the South Vietnamese Police, Brigadier General Nguyen Ngoc, executing the captured Viet Cong officer within a few hours of the outbreak of the Tet offensive. Some suggest that its impact was the turning point of the war.⁶² The United States entered the 1960s confident of the perfectibility of America, conscious of its

⁶⁰Blaine Harden, "Ceausescu, Wife Reported Executed after Trial: Army Defeating Secret Police in Bucharest," Washington Post, 26 December 1989, A1, A26.

⁶¹Jenkins, "Assassination," 5.

⁶²See, for example, Godfrey Hodgson, America in Our Time (New York: Doubleday and Company, Inc., 1976), 356.

historic mission and, above all, united. A decade later, that consensus lay in ruins.

The American consensus⁶³ rests on an ideology. The Vietnam War, however inaccurate this perception may be, came to symbolize contradictions in that ideology. The result was social upheaval. Political assassination similarly threatens to contradict democratic norms. How, then, would American society react to the revelation that its government had summarily executed a foreign leader.⁶⁴ Are Americans so logical, so calculating, so dispassionate that they can rationalize value-free foreign policy? The experience of the 1960s and 1970s suggests that we are not.

C. CONCLUSIONS

Maintenance of American values is hard. The dilemma of balancing Athens with Sparta is particularly difficult when the threats to global security are genuine and traceable to an irrational or criminal few. The rational, and perhaps moral, tendency is to strike back directly at the source. This chapter has argued that this tendency is fraught with dangerous practical and philosophical nuances.

⁶³Consensus here refers to a general belief system, rather than agreement on specific issues.

⁶⁴The counter-argument that an operation such as this would be conducted covertly and therefore without the knowledge of the American public ignores the history of U.S. covert operations. One of the most striking features of this history is the tendency for decision-makers to presume that covert operations would remain secret. This presumption makes it easy to ignore ethical questions. However, the record shows that this presumption is flawed.

What then are we to do with the arguments contained in the previous chapters? We have identified variables which appear to be, at the same time, incompatible and inextricable. This is the essence of the deadly dilemma.

"The tension between liberal ideal and institutional reality," writes Huntington, "is America's distinguishing cleavage." He continues:

It defines both the agony and the promise of American politics. If that tension disappears, the United States of America, as we have known it, will no longer exist.⁶⁵

American foreign policy must acknowledge this dissonance, abandoning neither element, yet acknowledging that either extreme is intellectually impoverished.

How can a government frame principles of conduct in the milieu of this dissonance? This is the salient question in the debate over assassination and the focus of the final chapter.

⁶⁵Huntington, 16.

VI. ON THE HORNS OF A DILEMMA

In 1974, Brian Jenkins remarked that "warfare in the future will be less coherent. Warfare will cease to be finite."¹ Today, in many respects, his observations are realized. One manifestation of the growing incoherence of warfare is the evolution of global threats which do not adhere to the widely accepted principles of the past. As the United States confronts adversaries whose organizations and objectives are structured along personal lines, the meaning of Jenkins's words become abundantly clear. The modern strategic milieu defies Clausewitzian logic and challenges political and military thinkers to reevaluate traditional wisdom.

Some argue that such a reevaluation will deliver U.S. policy from the fetters of an illusory global morality. A reality informed by utilitarian calculations alone will emerge to render moralistic charters, such as the assassination ban, absurd. If a threat to U.S. national interests assumes a personal character, then the counter to that threat is justified, in the name of expedience, to do the same. This paper has presented three arguments favoring this orientation.

First, assassination may be an effectual vehicle for waging war in a Third World regional or low intensity conflict. The demise of a dictator or charismatic

¹Brian Jenkins, "International Terrorism: A New Mode of Conflict," research paper no. 48, California Seminar on Arms Control and Foreign Policy (Los Angeles: Crescent Publications, 1974), 4.

leader may precipitate disarray and a struggle for power, thus facilitating the undoing of a disagreeable regime. Targeting military leaders may also provide a momentary tactical or psychological advantage which could accelerate war termination. At a sub-national level, terrorist organizations may provide no target, other than the terrorist himself, valuable enough for a military response. Another sub-national consideration is counterinsurgency warfare, the success of which may depend on specifically identifying and eliminating, through arrest or attrition, individuals of the political infrastructure in the countryside. The executive order not only denies the United States these warfighting alternatives, but, because of its vague language, it also renders ambiguous the legality of related, yet completely legitimate, options. Witness the Bush Administration's decision to withhold U.S. support from the failed coup attempt in Panama in 1989.

Second, a successful assassination can save lives. Conventional military force is a blunt instrument indeed when compared to an assassination. If an assassination, or a campaign of assassinations, can preclude the necessity of a conventional military response, then it preserves the lives of soldiers on both sides of a conflagration as well as the non-combatants who inevitably perish in any large scale conflict. If assassination is pursued in conjunction with, rather than lieu of, a conventional war, then war makers need look no further for moral authority than the lives saved by a more expeditious conclusion of the conflict. Moreover, assassination may also save lives by preempting a greater evil. If an

Adolf Hitler can be identified and eliminated before he realizes his gruesome ambitions, then failure to eliminate him is itself immoral.

The *third* argument which supports the rescision of a clear prohibition is the deterrent value of an ambiguous policy towards assassination. It is increasingly evident that traditional deterrence doctrine is flawed vis-a-vis the forces which threaten global security today. Modern deterrence requires a threat with a more personal message.

Squaring off against these three compelling arguments are the practical constraints and philosophical complexities presented in the previous chapter. Together they number six. *First*, assassination, if attempted, is a highly complex operation. Defeating the security which surrounds military and political leadership may prove to be prohibitively difficult. This obstacle was less relevant in the days of the Hashishiyyin who held no expectations of returning alive from their missions.² But the impulse to undertake suicide missions has never been a part of America's warfighting tradition. Security, therefore, is an imposing obstacle.

The *second* argument against assassination is the difficulty of identifying agents to carry out such an operation. If left to surrogates who would enjoy free movement within the targeted state, American political and military leaders would have little control over the endeavor. Delegating this mission to U.S. military or intelligence operatives, on the other hand, ensures control but ravages

²Hyams, 34.

the moral fortifications of military conventions which have traditionally protected Americans engaged in armed violence.

Third, there is very little evidence to suggest that assassination can accomplish its purpose. Indeed, as the conspirators against Caesar discovered, a contrary effect is just as likely. The linkage between a specific individual, particularly at the level of national leadership, and a disagreeable policy which his nation or organization may embrace, is often exaggerated and, as we saw in the Hitler example, never completely clear.

Fourth, predicting a successor is problematic. An assassination serves its agents only when the political heir of the victim is either more benign or less effective in manifesting his malignancy. Making this determination may be perplexing, however, since both identity and character of potential successors are often veiled by the reigning personality.

Fifth, if the United States chooses to assassinate its enemies, then, having set the moral agenda, it invites retaliation in kind. The United States may not be prepared for this type of an exchange. Indeed, in a war of attrition from the top, an open, democratic society suffers an inherent disadvantage.

Finally, military and economic power alone will not be sufficient to command a leading role in the new world order. The power of ideals will share ascendancy as a determinant of global power. Assassination, perceived by many to contradict democratic norms, will therefore weaken America's global credibility and corrode its domestic consensus.

After five chapters we can conclude only this: the issue of assassination in American foreign policy is indeed a dilemma. With this acknowledgement, however, we distinguish ourselves from a substantial body of commentators who speak in absolute terms. The executive order, for example, was conceived and drafted in a moral crisis—a political milieu in which absolutes were the order of the day. Therein lies the deficiency of the assassination ban. Many of the arguments which advocate assassination similarly disregard its paradoxical character. The remainder of this paper suggests alternatives for structuring coherent policy on the horns of a dilemma.

A. POLICY ALTERNATIVES

Confronted with an issue never specifically considered by the law, policy makers must determine whether the law requires modification or if the inherent flexibility of existing laws and institutions is sufficient to accommodate the phenomenon. If the former, then policy toward that issue is exceptionalistic; policy makers treat the matter as an exception to business as usual and affect fundamental adjustments. If the latter, then policy is normalistic; policy makers rely on conventions already in force to contain the matter in question. This section considers political assassination in the context of these categories.

1. The Exceptionalistic Approach

Clearly the executive order exceptionalized political assassination. It established a national policy where there had been none. Furthermore, as Chapter Four argued, it did so in a formalistic manner, circumscribing executive

power without affording flexibility. Should the United States continue to embrace such an intractable charter?

There are two reasons why, perhaps, it should. The first is that, although the executive order may cast a broad shadow, there is no doubt that its footprint proscribes "assassination writ large." Chapter Five presented compelling evidence that assassination in the classical sense is an entirely inadequate foreign policy solution. Besides being morally dubious, it is an uncertain instrument at best. Therefore, if there is indeed the danger of a "rogue elephant" in the government, as there may have been during the period spanning the attempts on Castro's life, then it is meet that policy tame this elephant.

But the commendable mission of taming the rogue elephant is not served by shooting it. During the days of the Church Committee, the degree of congressional moralizing seemed to indicate that the existence of the CIA was tenuous.³ Yet, unlike President Ford, many members questioned the wisdom of legislation explicitly banning assassination. Instead, Congress instituted oversight. Congress sought to tame the rogue elephant without imposing formalistic legal structures which might not be responsive to future crises.

The second, and best, reason for exceptionalizing policy toward assassination is that, by doing so, the United States provides an example for the world. Despite the objections of the realists, the U.S. national interest does not

³Indeed, the Committee gave serious consideration to proposing a total ban on all forms of covert action. See Dycus, Berney, Banks and Raven-Hansen, 319.

stop at its shorelines. The national interest is structured by a framework of value oriented goals: to preserve and promote democratic ideals. The U.S. national interest is served, therefore, when America's example of embracing these ideals is emulated. The assassination ban, as a monument to American respect for the rule of law, may provide such an example.

Since the assassination ban has been in force since 1976, it should be possible at this time to assess the influence of its example. The best measure of the force of an example is to determine how widely that example is emulated. The data is not promising. No other nation has issued a similar proclamation. This should prompt the United States to check the pulse of its example.

One explanation for the assassination ban's deficiency as an example is that those who the United States aims to influence through its example see the assassination ban as a cosmetic accessory to U.S. policy; a garnish to be set aside at the slightest provocation. Some argue that when the United States bombed Libya in 1986, it openly contradicted its own self-proclaimed restraint. The nature of some of the air strikes during the Gulf War is now cultivating similar indictments. The validity of these allegations is moot. Only perceptions are at issue here. If these notions represent prevalent perceptions, then America's shining example is critically tarnished. Indeed, the prohibition becomes a liability. Whenever U.S. actions appear to contradict its ideals, American ethics are criticized domestically and abroad as situational, its politics capricious, its rhetoric empty.

The American example is further invalidated if it is an example of weakness. "The power of example," writes Huntington, "works only when it is an example of power."⁴ If U.S. institutions and ideals render the United States impotent vis-a-vis infinitely weaker nations or sub-national entities, they will not be emulated. "In short, no one copies a loser."⁵

American ideals will serve as an example only if a balance is achieved between enhancing and voluntarily limiting U.S. power abroad. This requires flexibility in American foreign policy. Exceptionalistic policy is inherently inflexible. Since this approach to policy specifies an issue as unique from others, the guidelines it establishes must also be specific. Rather than enhancing flexibility, exceptionalistic policy is usually manifest in formalistic structure, a list of explicit proscriptive canons. Exceptionalistic policy, therefore, renders statutes, not people, as the determinants of international relations, a topic which, according to George Kennan, is too intricate to "suffer any total taboos."⁶

2. Normalizing Political Assassination

Normalizing assassination policy fixes the burden of moral deliberation on existing democratic institutions rather than specific laws. This, according to John Locke's concept of the "social contract," is appropriate. As he wrote in An Essay Concerning the True Original, Extent, and End of Civil Government: "What is to

⁴Huntington, 13.

⁵Ibid.

⁶Kennan, 214.

be done with foreigners, depending much upon their actions and the variations of designs and interests, must be left in great part to the prudence of those who have this power committed to them, to be managed by the best of their skill for the advantage of the Commonwealth."⁷

Entrusting America's moral purpose to the "prudence" of the government certainly requires watchfulness. Regulation can assume one of two forms. The first a strict legal framework, a list of "do's" and "don'ts." Walter Lippmann explains why this is not the prudent regulatory alternative.

The attempt to construct moral codes on the basis of an inventory is an attempt to understand something which is always in process of change by treating it as a still life and taking snapshots of it. That is what moralists have almost always attempted to do. They have tried to capture the essence of a changing thing in a collection of fixed concepts. It cannot be done. The reality of human nature is bound to elude us if we look only at a momentary cross-section of it.⁸

Policy determined by a legal framework projects itself absolutely. Its efficacy in the future, therefore, depends on the validity of its drafters' estimations of the future. If these forecasts are flawed, a likely event, so too is the policy. The assassination ban exemplifies this manner of regulation. By treating the global reality of the 1970s as a "still life," the Ford Administration fastened future administrations to that reality.

⁷Two Treatises of Government, ed. Peter Laslett, An Essay Concerning the True Original, Extent, and End of Civil Government (Cambridge: Cambridge University Press, 1960), 366.

⁸Walter Lippmann, A Preface to Morals (Boston: Macmillan Company, 1929), 170-171.

The second form of regulation, a normalistic approach, is to rely on and strengthen protective institutions. This alternative has many advantages, but makes a large presumption: that American institutions contain a moral dimension and are capable of moral deliberation. Huntington presents two reasons why this may be a valid presumption:

First, because American leaders and decision makers are, inevitably, the products of their culture. They are themselves generally committed to liberal and democratic values. This does not mean that some leaders may not at times take actions that run counter to those values. Obviously, this happens: sensibilities are dulled, perceived security needs may dictate other actions, expediency prevails, the immediate end justifies setting aside the larger purpose. But American policy makers are more likely than those of any other country to be sensitive to these trade-offs and to be more reluctant to sacrifice liberal-democratic values.

This argument suggests not only that moral judgement is indeed possible on an institutional level, but that it is an intrinsic feature of American institutions.

Huntington continues:

Second, the institutional pluralism and dispersion of power in the American political system impose constraints, unmatched in any other society, on the ability of officials to abuse power, and also ensure that those transgressions that do occur will almost inevitably become public knowledge . . . The belief that the United States can do no wrong in terms of the values of liberty and democracy is clearly as erroneous abroad as it is at home. But so also is the belief--far more prevalent in American intellectual circles in the 1970s--that the United States could never do right in terms of those values.⁹

Failure of American institutions to reflect American norms will, with few

⁹Huntington, 11-12.

exceptions, be exposed either by other formal institutions or, more likely, by informal institutions such as private interest groups or the free press.

Only the normalistic approach allows adjustment of policy in the light of discussion and experience. It alone makes it possible to account for the unforeseen consequences of discretionary decisions. It alone allows for fundamental transformations in the global framework and the character of threats to global security. "All democratic long-term policy," writes Karl Popper, "must be conceived in terms of impersonal institutions . . . the problem of controlling the rulers, and of checking their powers, [is] in the main an institutional problem."¹⁰

Laws are limited. Any statute, whether it is empowered by the force of constitutional or international law, or simply a presidential promise, can hold a community only to those standards which it generally accepts. As Jack Donnelly notes, "Law cannot make the majority of people or states better than they truly want to be."¹¹ If laws run counter to common wisdom, they simply will not compel compliance.

Normalizing the issue of assassination allows U.S. foreign policy to function in a flexible manner. Congressional policy output following the Church Committee hearings exemplifies the normalistic approach. Congress sought to arrest the pattern of executive excesses not by imposing specific constraints, but

¹⁰Karl Popper, The Open Society and Its Enemies, Vol. 2 (Princeton: Princeton University Press, 1962), 131.

¹¹Jack Donnelly, "Humanitarian Intervention: Law, Morality and Politics," Journal of International Affairs, Winter 1984, 323.

rather by improving the process by which decisions are made. The Intelligence Oversight Act of 1980 expanded the reporting procedures established in 1974 under the Hughes-Ryan Amendment to ensure that the lines of operational authority for covert operations were clearly established.¹²

The lack of specific prohibitions, a list of "don'ts," does not indicate, as some have criticized, moral ambiguity.¹³ Rather, it exhibits an acknowledgement of the nuances of the deadly dilemma. The constraints imposed by Congress exclude no course of action a priori. Yet, by ensuring that existing checks and balances are robust, they compel moderation and alert policy makers to normative considerations.

If the United States normalizes its policy toward assassination, then its use is governed by the same institutions, laws and guidelines which regulate foreign intervention of any kind. This is not an anarchistic approach, nor does it disproportionately empower one branch of the government. Normalizing assassination policy confers the long and successful American tradition of controlling its leaders through democratic institutions.

3. Recommendations

"The worst thing you can do," writes Buckley, "is to attempt to codify rules governing situations as emotionally and rationally complex as a lover's signal to

¹²For a discussion of these laws see Dycus, Berney, Banks and Raven-Hansen, 315-325.

¹³See Oseth, 179.

his quarry . . . What we need is a blur as thick as the stuff that sits over Los Angeles, and gums up CIA typewriters."¹⁴ Buckley's metaphor suggests that ambiguity regarding America's philosophy toward assassination is desirable. This is sound counsel. Ambiguity is the causal nexus between a threat and successful deterrence. If the threat of assassination is to serve a deterrent role, then it is best that U.S. intentions remain unclear. A unilateral, self-denying ordinance is injurious, therefore, since it mitigates uncertainty for a prospective enemy.

But Buckley goes on to champion the current policy toward assassination. He contends that the abstruseness of the prohibition's language, along with the general perception that the United States will do as it pleases despite its own statutes, serves the purpose of establishing the necessary ambiguity. As we have seen in previous chapters, this aspect of Buckley's argument is flawed for two reasons. First, because the assassination ban is imprecise at the edges--in cases that do not fit the classical perception of an assassination--it is an obstacle to, rather than a vehicle for, flexibility. Second, if the United States projects an image of a government that makes and breaks laws to serve the utility of the moment, it jeopardizes its credibility.

Normalizing policy permits assassination to serve as a deterrent threat against an enemy who may be unmoved by other threats. Furthermore, it reduces the likelihood that a decision maker, informed by the broadest criteria for assassination, will fail to act with force when forcible action is appropriate. An

¹⁴Buckley, 63.

important distinction is necessary, however. The recommendation to normalize policy toward assassination is not an endorsement of assassination itself as an instrument of foreign policy. Removing "never" from assassination does not imply "always" or even "ever." The choice is not between formalized law and chaos.

Normalizing policy may be less ambitious than establishing legal bindings, but it may serve the spirit of the executive order better than the ban itself. If the prohibition were lifted, decision makers could consider the nuances of the deadly dilemma in an open forum. With the shroud of illegitimacy removed from the issue, political and military leaders could discuss political assassination without euphemism or regard for ensuring plausible denial. Informed by institutional deliberation, decision makers would see assassination for what it is: an instrument which caricaturizes global realities. The chessboard logic of assassination--that to kill the king is to end the game--is ultimately flawed. Its proponents invariably oversimplify the complexities of reality, discount long-term costs for near-term satisfaction, and disregard America's moral purpose.

Informed decision makers must conclude that there is no place for assassination in America's warfighting arsenal. This, however, is a conclusion that will not evolve in a milieu of moral absolutism. This acknowledgement requires cultivation in the fields of political discourse.

The dominant imperative of policy makers facing a policy dilemma such as the one presented here, must be this: do not make a bad situation worse. This

paper suggests that the assassination ban, because of its excessive formalism, is a violation of this imperative. Ours is not a world of absolutes, moral or otherwise, as the executive order would have it. The best prescription for preserving a necessary degree of ambiguity while protecting American credibility abroad, is to rescind the assassination ban and normalize American policy toward assassination. America's institutional framework for moral judgement, rather than explicit formalities prescribed by law, should become the centerpiece of regulation.

4. Recommendations for Future Research

Conspicuously absent from the recommendations presented above is a discussion of political avenues for achieving a normalized policy toward assassination. This could be a tempestuous process indeed. Relaxing prohibitions on the use of force would certainly be resisted. How does a democracy retreat from a moral platform when it determines that its platform is precarious? If a nation concludes that it has made an unfortunate ethical decision, what must it do to correct the situation and avoid similar mistakes in the future? These questions deserve dedicated analysis. Although this paper does not attempt to engage them with warranted rigor, it does offer some cursory observations.

If the assassination ban is indeed dysfunctional, then policy makers have two options: modify it or rescind it.¹⁵ The former would most likely necessitate

¹⁵A third option, of course, is to allow the order to continue to be dysfunctional.

enhancing the clarity of the ban. If the United States decides that its interests are indeed best served by a declared prohibition, then the guidelines of that prohibition should be clear, sharp, and comprehensive; it should be made as invulnerable as can be to self-serving interpretations or self-denying misinterpretations.

The second option is rescission of the assassination ban. If Congress had written the prohibition against assassination into law in the 1970s, outright rescission would be politically infeasible. But because the assassination ban is contained in an executive order, it can be changed or eliminated "at the whim of the President."¹⁶ An executive order, therefore, is probably the best form for exceptionalist policy toward assassination to take. Nevertheless, all laws, even "presidential laws," express a nation's values. The debate and publicity which would necessarily accompany a decision to abandon the prohibition outright would precipitate charges at home and abroad of corruption of American values.

A less dramatic measure for eliminating the assassination ban is to simply allow it to disappear between administrations. An executive order requires a presidential signature with each new administration. Each new president, therefore, has the opportunity to reject the self-imposed constraints of his predecessors.

A final alternative, and perhaps the only practical, near-term solution, is to dilute the assassination ban through additional legislation, presidential findings

¹⁶George J. Church, "Saddam in the Cross Hairs," Time, 8 October 1990, 29.

or excessive clarification. Like the Constitution, explication is best accomplished through the experiences of specific cases. To some degree, this has happened. After the failed coup in Panama in 1989, the Bush Administration and the Intelligence Committees agreed that "a decision by the President to employ overt military force . . . would not constitute assassination if U.S. forces were employed against the combatant forces of another nation, a guerrilla force, or a terrorist or other organization whose actions pose a threat to the security of the United States."¹⁷ Perhaps over time, by actions and assertions, the United States could shape the assassination ban informally to weaken it beyond relevance or make it a more nuanced document, sensitive to the deadly dilemma. The cost in doing so, however, is invoking charges of violation which will inevitably accompany the erosion of the assassination ban in this manner.

Any retreat from the assassination ban will be politically precarious. The correct avenue of withdrawal, therefore, is the one which contains risks more tolerable than those of maintaining the prohibition. If future researchers can identify such an avenue, then policy makers would be well advised to promptly take it.

¹⁷"Foreign Targets, Assassination Policy Rethought, Los Angeles Times, 14 October 1989, A1.

B. CONCLUSIONS

Arthur Schlesinger writes, "The American character is indeed filled with contradiction and paradox. So, in consequence, is American foreign policy."¹⁸ The deadly dilemma is but one example of such a contradiction. The debate over assassination, therefore, offers insights into a larger inquiry: the function of morality in national security policy.

The two perspectives which have competed for control of American foreign policy, *realpolitik* and the democratic ideal, often fail to coincide in an imperfect world. But the chasm between the influences of national interest on one hand, and normative values on the other, is not necessary. Its source lies in the tendency toward absolute adherence to either. The American political system is structured upon the Madisonian model of compromise and consensus building. It is a system which cannot process absolutes.

The choice between moral absolutism and value-free social science, therefore, does not exhaust the spectrum of American foreign policy alternatives. Indeed, policy which rejects one for the other is inherently flawed. Any moral dimension in American foreign policy must also reflect an empirical judgement of the international reality. Likewise, any expression of *Realpolitik* which fails to account for America's moral impulse will ultimately fail to command popular assent. This imperative of balancing realism and idealism does not become irrelevant when the United States is forced into a situation which necessitates

¹⁸Schlesinger, 1.

deadly force. The United States must prevail on the battlefield, but prevail in a mode consistent with democratic tradition.

The role of morality in American national security policy is that of a compass to guide America through the ambiguities of reality. Without that compass, foreign policy loses its purpose. Once the U.S. government abandons its moral compass, it must be seen as Tolstoy saw all governments: "intricate institutions, sanctified by tradition and custom. for the purpose of committing by force and with impunity the most revolting crimes."¹⁹

But moral absolutism is equally pernicious. If an expression of morality becomes intractable, a narrow path which inflexibly imposes the course of America's actions, then U.S. policy will inevitably collide with the reality of an anarchical world. Mao Tse-tung once used an historical example to illustrate the perils of absolute adherence to preordained ethical imperatives. In 638 B.C., the feudal states of Sung and Chu fought a battle at the Hung River in central China.²⁰ The Sung forces, led by Duke Hsiang, were already deployed in battle positions when the numerically superior Chu troops were fording the river. When the Chu soldiers were halfway across, one of Hsiang's officers suggested that this was the moment for attack. The Duke refused, replying, "No, a gentleman should never attack one who is unprepared." When the army had

¹⁹Leo Tolstoy quoted in Hyams, 11.

²⁰See *Selected Military Writings of Mao Tse-Tung* (Peking: Foreign Languages Press, 1968), On Protracted War, Mao Tse-tung, note 33, 267.

crossed the river but had not yet re-formed its lines, the officer again proposed an attack; again the Duke refused. "No, a gentleman should never attack an army which has not yet completed its battle alignment." Only after the Chu soldiers were fully prepared did the Duke signal the attack. In the ensuing battle, the Sung troops met with a disastrous defeat and Hsiang himself was wounded. "We are not Duke Hsiang of Sung," wrote Mao Tse-tung, "and we have no use for his asinine ethics."²¹

Moral absolutism can lead foreign policy into "asinine ethics" and a position of defenselessness vis-a-vis the dangerous aspirations of governments or organizations which are not similarly constrained. Insistence on the perfect adherence to unclear ethical codes, such as the one expressed in the assassination ban, threatens to render American power irrelevant. This, according to Paul Seabury, is among the worst abuses of power. "To withhold power and influence in some small instances of trouble may be wise; but a known, persistent tendency to withhold even limited power risks the greater danger that much higher inputs of power will have to be used later."²² In 1976, Jimmy Carter's presidential campaign became a referendum on the role of morality in U.S. international relations.²³ Carter's failure to recognize the limits of ideological power, however,

²¹Ibid., 240.

²²Seabury, 13.

²³Miller 146.

resulted in the collapse of his crusade. The goals of moral absolutism, confronted by an imperfect reality, proved to be too ambitious.

Surviving the changing patterns of the global political milieu necessitates a framework for decision making which is also capable of change and continual adaptation to new situations. Policy makers fascinated by moral absolutes, like many of those who insist on explicitly prohibiting political assassination, ultimately deprive U.S. foreign policy of its ability to respond to fluctuating environmental challenges. Those indoctrinated in the notion of a value-free social science, like many proponents of assassination, ultimately deprive America of its character. U.S. foreign policy must straddle the gulf between realism and idealism; for between these two points of influence moves our world. The dissonance between interests and values, while being neither a blessing nor an affliction, is among America's defining characteristics. The role of foreign policy, therefore, must be to manage this contradiction, not to deny it.

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